Foreign Direct Investment Regulation Guide

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Forword and acknowledgements

Regulations on foreign direct investment (**FDI**) are changing rapidly due to growing national security concerns. Although there were already controls in place before covid-19, the pandemic and a growing shift towards protectionist economic policies have spread these concerns more widely among governments around the world. There is an undeniable trend towards increased scrutiny of deals in a number of jurisdictions, including the United States, Europe and Australia. At the same time, there is still a keen need for foreign investment in many Asian countries.

Practical and timely guidance for both practitioners and enforcers trying to navigate this fast-moving environment is therefore critical. This Foreign Direct Investment Regulation Guide – comprising contributions of Warwick member firms across the globe – provides just such detailed analysis. It examines the current state of law for the most important jurisdictions in which foreign direct investment is possible.

The guide draws on the expertise of distinguished practitioners with the Warwick Legal Network globally and aims to give practitioners, WLN-members, clients and in-house counsels an introduction in and overview of FDI regulation in various parts of the world, notably the US, the UAE, the UK, China, India, Malaysia, Vietnam and Europe.

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Sjef Bartels, Labré advocaten
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1. Regulating foreign direct investments across the world

Against a backdrop of escalating global protectionism, FDI regulation has become an increasingly important piece of the regulatory puzzle in recent years. Careful consideration now needs to be given to the potential application of FDI rules to cross-border M&A. Many countries traditionally open to foreign investment (including the United States, Australia, the United Kingdom and a number of other European countries) have seen a significant shift towards stricter scrutiny, both in terms of policy frameworks for screening inward foreign investment and the way in which they are applied.

Yet, at the same time, a contrasting approach has been taken in a number of Asian countries wishing to encourage inward FDI, which have progressively opened parts of their economies to FDI and streamlined their screening processes (albeit subject to some temporary restrictions in response to the covid-19 pandemic). Understanding these global trends, and staying on top of frequent and fast-moving changes in the FDI rules applicable in individual jurisdictions, is critical to navigating this increasingly fluid environment for foreign investment.

Historically, FDI regulation originated in the US, where the basic structure was already laid down by the establishment of the Committee on Foreign Investment in the United States (**CFIUS**) in 1975. China soon followed with the adoption of the Law on Chinese-Foreign Equity Joint Ventures in 1979. In the European Union, however, no FDI regulations existed until the adoption in 2019 of the Regulation 2019/452 establishing a framework for the screening of foreign direct investments (the **Regulation**).

This guide is structured per country, albeit that the Regulation and the situation in the European Union will be discussed in a separate chapter (Chapter 4 '*European Union*').

2. United States of America

	Topic	Comment
1	General: A. Have any FDI-regulations been implemented in national law? B. When did/do(es) the national law(s)/act(s) come into force? C. Does the national law have retrospective effect?	A. Yes – please see the United States' Treasury's website for more specific information. B. CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended (section 721), and as implemented by Executive Order 11858, as amended, and the regulations at chapter VIII of title 31 of the Code of Federal Regulations. See the additional amendments identified in Section 2 below. C. N/A.
2	Have any additional law(s) or /act(s) on FDI been adopted?	The authority of the President to suspend or prohibit certain transactions was initially provided by the addition of section 721 to the Defense Production Act of 1950 by a 1988 amendment commonly known as the Exon-Florio amendment. Section 721 was substantially revised by the Foreign Investment and National Security Act of 2007 (FINSA), which became effective October 24, 2007, and the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which became effective August 13, 2018. Section 721 of the Defense Production Act of 1950, as amended, is codified at 50 U.S.C. 4565. CFIUS applies across all U.S. states.
3	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	Under CFIUS there are mandatory disclosures and voluntary disclosures (known as a "declaration"), please fully review the rules to determine if a mandatory disclosure is required. A "declaration" is submitted through a special website portal through which the parties to the transaction provide the details of the transaction, including a draft of the purchase agreement, if applicable. Once a declaration has been received by CFIUS there is a 45-day review period, a 45-day investigation period (if needed), and a 15-day presidential review period (if needed). At any time during the review or investigation period, parties must respond to follow-up requests for information within three business days of the request, or within a longer time frame if the parties

		so request in writing and the Staff Chairperson grants that request in writing. Where CFIUS has completed all action with respect to a covered transaction or the President has announced a decision not to exercise his authority under section 721 with respect to the covered transaction, then the parties receive a "safe harbor" with respect to that transaction.
4	What are the main other features in relation to FDI that investors should be concerned with?	A covered transaction historically was one in which a "foreign person" acquired "control" over a "U.S. business." A U.S. business can be any entity engaged in commerce within the U.S. For example, a foreign company with U.S. operations can also be a U.S. business. Since February 13, 2020, CFIUS has had expanded and extended jurisdiction over certain noncontrolling investments ("covered investments") into companies that: • Work with particularly sensitive technologies ("critical technologies") • Own, operate, or support U.S. critical infrastructure, *e.g.*, financial services or transportation providers (*i.e.*, "critical infrastructure") –or– • Have access to certain sensitive personal data belonging to U.S. citizens (*i.e.*, "sensitive personal data") "Covered Transactions" also include certain purchases of real property.
5	Does the national law on FDI-screening only apply to foreign direct investments from outside the U.S.?	Applies to all non-US buyers - A foreign person is a non-U.S. national or non-U.S. entity, or an entity over which control can be exercised by a non-U.S. national or entity. CFIUS looks through the ownership of the buyer to determine the nationality of the ultimate owner(s) of the buyer such that a "blocker" entity cannot be used to avoid the rules.
6	Which are the relevant institutions regarding an FDI-screening under the national law?	The members of CFIUS include the heads of the following departments and offices: Department of the Treasury (chair) Department of Justice Department of Homeland Security Department of Commerce Department of Defense Department of State Department of Energy Office of the U.S. Trade Representative Office of Science & Technology Policy
7	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are	It is unclear what criteria CFIUS looks at when determining if a transaction poses a national security risk.

	the consequences for the (pending) transaction during the screening?	Purchase agreements will often contain a clause that is frequently referred to as the Exon-Florio clause which may make regulatory approval by CFIUS a specific conditions precedent such that CFIUS approval is needed prior to closing.
8	What are the possible outcomes of an FDI-screening by the designated (national) authority?	The majority of transactions reviewed by CFIUS are cleared without incident. However, when the Committee believes an investment does present national security risk, it has the right to negotiate with the parties over a set of conditions, or "mitigation measures," that may address those risks. In the event the parties do not come to an agreement, CFIUS can impose mitigation measures with respect to the investment, block it, or force a post-closing divestiture.
9	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	There is no statute of limitations on CFIUS's enforcement team's ability to bring in a non-notified covered transaction—assuming that the case is not filed and cleared—and so filings may be compelled years after an investment is made. Clearance through the filing process provides safe harbor against this kind of compelled review. When reviewing a non-notified transaction that has already closed, CFIUS is more likely to seek more drastic measures (*e.g.*, divestiture) than provided in Section 8 above.
10	Are there any exceptions applicable under national law to the obligations arising from CFIUS?	There are no exceptions, although there may be lower standards for certain United States allies, currently, only: Canada, the UK, Australia, and New Zealand qualify – the application process is very difficult.

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3. China

General Introduction

Beginning in 1979 with the establishment of the Law on Chinese-Foreign Equity Joint Ventures, China has enjoyed a history of more than 40 years of foreign investment. The field of foreign investment has continuously been expanding and reforming so as to meet the growing globalization of the economic market. In 2022, China's foreign investment absorption rose by 6.3% and the amount of foreign investment reached 1.2 trillion CNY.

China has been constantly improving its domestic conditions for foreign investment. The basic system of foreign investment in mainland China is to keep the national treatment as the principal and use the negative list as the management measure. In recent years, the negative list of Special Administrative Measures for Foreign Investment Access has been shortened, and opportunities for foreign investment in a variety of domestic industries have been further extended.

Restrictions of Foreign Direct Investment: Prohibited Sectors and Restricted Sectors

The access of foreign investment into mainland China is mainly regulated under the Foreign Investment Negative List ("**Negative List**"), updated regularly over the years. As the Special Administrative Measures for Foreign Investment Access (2021 edition) came effective on Jan 1, 2022, the current negative list has been reduced to 31 items, with a reduction ratio of 6.1% as compared to the 2020 edition, where 33 items were listed.

It should be noted that the Negative list is a separate provision and exclusively tailors to foreign investors. Unless otherwise stated, generally, industries not listed in the Negative list are normally permitted or encouraged in China. Based on each case, there may be additional licensing requirements to fulfill. For the purpose of this article, the additional licensing requirement will not be discussed.

The following discussion highlights the prohibited items and restricted items included in the 2021 edition of the Negative list, effective from Jan.1, 2022, to the present.

Prohibited Sectors

The prohibited sectors indicate industries that are not open to foreign investors. The table outlines exclusively the prohibitions of each industry (if any) for foreign investors, with reference to the Special Administrative Measures for Foreign Investment Access (2021 edition).

No.	Special management measures
1. Agriculture, forestry, animal husbandry, and fishery	
1	Investment in research and development, breeding, cultivation, and plantation of the Chinese rare and unique precious fine varieties (including excellent genes of plating, animal husbandry and aquaculture) shall be prohibited.

2	Investment in the breeding of genetically modified varieties of crops, livestock and poultry, and aquatic seedlings, as well as the production of genetically modified seeds (seedlings), shall be prohibited.
3	Investment in the fishing of aquatic products in marine areas under China's jurisdiction and within Chinese territorial waters shall be prohibited.
2. Mining	
4	Investment in exploration, mining, and beneficiation of rare earth, radioactive minerals, and tungsten shall be prohibited.
3. Manufacturing	
5	Investing in the application of steaming, stir-frying, moxibustion, calcination of Chinese herbal medicines, and other processing techniques as well as the production of confidential prescription products of proprietary Chinese medicines shall be prohibited.
4. Production and supply of electricity, heat, gas, and water	
/	No specific prohibitions included.
5. Wholesale and retail trade	
6	Investment in wholesale, retail of tobacco, cigarettes, re-dried leaf tobacco, and other tobacco products shall be prohibited.
6. Transportation, warehousing, and postal industries	
7	Investment in postal companies and domestic express mail business shall be prohibited.
7. Information transmission, software, and information technology services	
8	Investment in Internet news service, Internet publishing service, Internet audio-visual program service, cyberculture operation (except for music), and Internet information dissemination service (except for contents have already been opened in China's WTO commitments) shall be prohibited.
8. Leasing and business services	
9	Investment in Chinese legal matters (except for the provision of information on the impact on the Chinese legal environment) shall be prohibited and a foreign investor shall not be appointed as a partner of a domestic law firm.
10	Investment in social surveys shall be prohibited.
9. Scientific research and technical services	
11	Investment in the development and application of human stem cells and gene diagnosis and treatment technologies shall be prohibited.
12	Investment in humanities and social science research institutions shall be prohibited.
13	Investment in geodetic surveying, marine surveying and mapping, aerial photography for surveying and mapping, ground motion surveying, and surveying and mapping of administrative boundaries shall be prohibited. Preparation of topographic maps, world administrative area maps, national administrative area maps, maps of administrative areas at or below the provincial level, national teaching maps, local teaching maps, true three-dimensional maps and electronic navigation maps; and regional geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters, remote sensing geology and other surveys (the mining right holders are not subject to these special administrative measures when carrying out work within the scope of their mining rights) shall also be prohibited.
10. Education	
14	Investment in compulsory education institutions or religious education institutions shall be prohibited.

11. Health and social work	
/	No specific prohibitions included.
12. Culture, Sports, and entertainment	
15	Investment in news organizations (including but not limited to news agencies) shall be prohibited.
16	Investment in editing, publishing, and production of books, newspapers, periodicals, audio-visual products, and electronic publications shall be prohibited.
17	Investment in various levels of radio stations, television stations, radio and television channels (frequencies), radio and television transmission network (transmitter stations, relay stations, radio and television satellites, satellite uplink stations, satellite receiving stations, microwave stations, surveillance stations, and cable radio and television transmission network, etc.) shall be prohibited. Engaging in the business of video broadcasting by order of radio and TV and the installation services of ground receiving facilities for satellite TV broadcasting shall also be prohibited.
18	Investment in companies producing and operating radio and television programs (including the introduction of businesses) shall be prohibited.
19	Investment in film production companies, distribution companies, cinema companies, and film importation businesses shall be prohibited.
20	Investment in auction companies for heritage auctions, heritage stores, and state-owned heritage museums shall be prohibited.
21	Investment in performing arts groups is prohibited.

Restricted Sectors

The table below outlines exclusively the restrictions of each industry (if any) for foreign investors, with reference to the Special Administrative Measures for Foreign Investment Access (2021 edition).

No.	Special management measures
1. Agriculture, forestry, animal husbandry, and fishery	
	The Chinese investors shall hold no less then 34% of the shares for the selection of new wheat varieties and seed production, and the selection of new corn varieties and seed production shall be controlled by the Chinese Party.
2. Mining	
	No specific restrictions included.
3. Manufacturing	
	Printing of publications must be controlled by Chinese investors.
4. Production and supply of electricity, heat, gas, and water	
	The controlling stake for the construction and operation of nuclear power plants shall be held by Chinese investors.
5. Wholesale and retail trade	
	No specific restrictions included.
6. Transportation, warehousing, and postal industries	
	Domestic water transport companies must be controlled by Chinese investors.

	The controlling stake of public air transport companies shall be held by Chinese investors; the ratio of investment from a foreign investor and its affiliates must not exceed 25%; and the legal representative shall be a Chinese citizen. The legal representative of a general aviation enterprise shall be a Chinese citizen, in which the general aviation enterprise serving the agricultural, forestry, and fishery industries is limited to the form of equity joint ventures; and the controlling stake of other general aviation companies are limited to holding by Chinese investors.
	For the construction and operation of civil airports, the comparative controlling stake shall be held by Chinese investors. Foreign parties shall not participate in the construction and operation of the airport tower.
7. Information transmission, software, and information technology services	
	Telecom companies shall be limited to the telecom business that China has promised to open up in WTO; the foreign share ratio of value-added telecom business shall not exceed 50% (except e-commerce, domestic multi-party communication, storage and forwarding, and call centers); and the controlling stake shall be held by Chinese investors for basic telecommunications services.
8. Leasing and business service	
	Market surveys shall be limited to the form of equity joint ventures, and radio and television rating surveys shall be controlled by Chinese investors.
9. Scientific research and technical services	
	No specific restrictions included.
10. Education	
	Pre-school education, ordinary high school, and higher education institutions shall be limited to Sino-foreign cooperative education and must be under the control of the Chinese investors (the president or the chief executive shall have Chinese nationality, and Chinese investors shall comprise not less than half of the council, board, or joint administrative committee).
11. Health and social work	
	Medical institutions are limited to the form of equity joint ventures.
12. Culture, Sports, and entertainment	
	No specific restrictions included.

Corporation Form of Foreign Direct Investment

There are usually several corporation forms of foreign investment in China: 1. Limited liability company. 2. Representative Office.

Limited Liability Company

A limited liability company in China refers to an economic organization registered in accordance with the Regulations of the People's Republic of China on the Administration of Company Registration. It shall be established based on the amount of capital each shareholder has subscribed to. The company bears full liability for the debts of the company with all its assets. Limited liability company is the most common corporation form in mainland China.

One common types of foreign investment in the form of limited liability companies are Wholly Foreign-Owned Enterprises (WFOE). WFOE refers to a limited liability company whose entire capital is invested by a foreign investor in accordance with the laws of mainland China, i.e., the foreign investor holds 100% shares of its subsidiary registered in mainland China

Representative Office

A Representative Office (RO) acts as a non-profit entity set up by a foreign company in China to take part in various business activities. It serves as a liaison between foreign companies and the Chinese market and helps contemplate relevant operations, promotions, etc. It mainly promotes non-profit activities in the name of a foreign company. A representative office shall not be seen as a separate legal entity. It operates with the authorization and supervision of a foreign company.

Corporate registration procedure: Wholly Foreign-owned Enterprise

The following discussion features the procedures of WFOE establishment in China as an example of how various corporation forms of foreign direct investment shall register and establish in China.

Procedures of Wholly Foreign-owned Enterprise Establishment in China:

a. **Choose a Registered Office.** Normally, companies are required to have an existing office before its registration i.e., a lease agreement must be executed in advance of establishment. However, based on each case, there can also be the option of a virtual registered office as well.
b. **Documents preparation from Investor (Parent Company).** Once the registered address is ascertained, the government will require properly executed documents from the investors. If the investor is a foreign entity, its company documents need to be notarized / legalized in advance to be submitted to the Chinese authorities. The notarization shall be completed by the notary office where the investor is incorporated, and the legalization shall be completed by the Chinese Consulate in the country where the investor is incorporated.
c. **Approval of the Company Name.** In practice, 3 - 10 desired company names are submitted for approval and the company name must be in Chinese. The name in English could be registered but could only serve the purpose of translation. Please note that this is a crucial step of the procedure as once the name is approved, it would be retained for a period of time.
d. **Documents preparation for the formation.** During the stage of approval of the company name, the drafting of relevant documents and agreements required for and relevant to the formation of the company, including but not limited to the Articles of Associations, shall be examined carefully.
e. **Completion of the Application Form and Submission.** All incorporation application forms are in Chinese. The contents of these forms are essential regarding execution. Normally, the forms would require the investor and/or the legal representative to conduct and execute.
f. **Application of other required Licenses.** When the company registration is finished, relevant government departments will provide the Business License and

the seal of the company. It should be noted that other licenses are also required for the application of certain businesses.

Generally, the procedure above will take approximately a month to complete from the date of the first submission of documents to the local government. The time length might vary based on different cases.

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4. European Union

Introduction to the Regulation

Until recently there was no comprehensive framework for regulation and the screening of FDI in the European Union. Some Member States had adopted FDI-screening mechanisms, but a harmonised approach on EU-level was lacking and no coordination between the Member States nor a common standard existed. An effective assessment and control of the risks to security and public order was therefore not possible. As mentioned in chapter 1 '*Regulating foreign direct investments across the world*', the Regulation has now established a regulatory framework o FDI in a European level. The concrete implementation in legislation was to be done at the level of the Member States themselves. This has led and leads to an increase of legislation and regulation in each Member State on FDI.

On 10 May 2017, the European Commission published a 'Reflection paper on harnessing globalisation'[1] in which it identified several opportunities and challenges. The European Commission underlined the importance of the internal market which embraces third parties to participate in it and therefore the benefits of FDI in the European Union (for reasons of e.g. economic growth, job creation and innovation). However, the European Commission recognised and confirmed its commitment to protect the internal market, the interests of the Member States and its citizens from unlawful, unfair and/or unwanted practices or actions that might threaten the security and public order of the European Union. Later that year (13 September 2017), the European Commission published a proposal for an FDI-screening mechanism for the whole of the European Union[2] (the proposal for 'Communication on Welcoming Foreign Direct Investment while Protecting Essential Interest'). In this proposal it repeated its ideas, opportunities and concerns as stated before. Thereupon the European Commission proposed to create a European Union wide framework for the screening of foreign direct investments into the European Union on grounds of security or public order. The Regulation was adopted on the 10th of April 2019 and became applicable starting from the 11th of October 2020.

Purpose of the Regulation

The purpose of the Regulation is to protect the strategic interests of the European Union – and of its separate Member States – while keeping the internal market accessible for foreign direct investments. The Regulation does not apply to:

g. Intra-European Union investments (investments of investors that are established in a Member State and want to invest in another Member State); and
h. EU-investors' access to third-country markets (this might be regulated by the regulations of that third country).

The Regulation has established a framework regarding the screening of foreign direct investments in the European Union. Furthermore, a mechanism for cooperation between

[1] To consult on: https://commission.europa.eu/publications/reflection-paper-harnessing-globalisation_en.
[2] Communication on Welcoming Foreign Direct Investment while Protecting Essential Interest, to consult on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0494.

Member States, and between Member States and the European Commission, was implemented with regard to foreign direct investments likely to affect security or public order. It includes the possibility for the European Commission to issue opinions on such investments.

The Regulation is based mainly upon three ideas: cooperation, collaboration and information sharing. It establishes a framework enabling Member States and the European Commission to check and comment on a FDI taking place in another Member State, irrespective of whether the Member State receiving the FDI has chosen to screen the FDI or not.

The Regulation does not create a system 'across' the European Union to screen FDI by any organ of the European Union. The European Union, specifically the European Commission, still has limited powers to act. It does not oblige Member States to adopt a screening mechanism or to fully harmonise existing screening mechanisms. The primary responsibility for vetting FDI remains with the Member States. Therefore, each Member State needs to (but is not obliged to) base a national law on the Regulation and apply this national law (bearing the Regulation in mind).

The Regulation does provide for information sharing and cooperation between Member States and the European Commission. This involves the mandatory notification to the European Commission and other Member States of any FDI and investigation of/within any Member State (on a national level), including the provision of certain specified information. The Regulation also requires that existing (and any new) regimes comply with a minimum set of requirements, while also encouraging those Member States that currently do not have an FDI regime to adopt relevant legislation and/or regulation.

The main definitions and concepts of the Regulation

In article 2 section 1 of the Regulation a 'foreign direct investment' is defined as:

> "*an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity*".

As defined in article 2 section 2 of the Regulation, a 'foreign investor' is:

> "*a natural person of a third country or an undertaking of a third country, intending to make or having made a foreign direct investment*".

The Regulation does not apply to portfolio investments.[3] The Regulation covers any FDI from third countries and is not subject to any monetary thresholds.

[3] In case law of the Court of Justice of the European Union the Court defined what a 'portfolio investment' is: Court of Justice of the European Union 28 September 2006, ECLI:EU:C:2006:608 and ECLI:EU:C:2006:234.

Furthermore, the Regulation uses two important concepts: 'security' and 'public order'. These concepts are not defined in the Regulation. Article 4 of the Regulation contains a non-exhaustive list of sensitive sectors and other relevant factors that the Member States and the European Commission may focus on when determining whether an FDI is likely to affect the 'security or public order'. Article 4 section 2 of the Regulation further provides that in determining whether an FDI is likely to affect security or public order, the Member States and the Commission may also particularly take into account whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding. Also, other circumstances such as whether the foreign investor has already been involved in activities affecting security or public order in Member States or whether there is a serious risk that the foreign investor engages in illegal or criminal activities can be taken into account.

Although the Regulation does not require Member States to adopt national legislation based on the Regulation, it does require Member States to be transparent about the circumstances in which a FDI will trigger a review and the procedure to be applied in such circumstances. It prohibits Member States to discriminate between third countries.

The Member States are obliged to report their existing screening mechanisms and amendments thereof to the European Commission, who in turn maintains a publicly available list of this information. The Member States should appoint a relevant contact point for all matters regarding implementation of the Regulation.

Developments in the Member States

The European Commission keeps encouraging Member States to implement and/or improve national screening mechanisms. As a result more and more Member States are putting screening mechanisms into place. Although the European Commission and the Member States cooperate and the Member States adopt national legislation based on the Regulation, there are a lot of differences between the national legislations on the screening of FDI of the Member States.

One important development for that might accelerate the adoption of national legislation on the basis of the Regulation is the ongoing conflict in Ukraine. The European Union sanctioned Russia (or a lot of its citizens and affiliated parties), with the aim of significantly weakening Russia's economic base, depriving it of critical technologies and markets and undermining its ability to finance the conflict. This also applies to Belarus due to its involvement in the war against Ukraine.

On 6 April 2022, the European Commission published a guide to give its Member States guidance on how to screen foreign direct investments from Russia and Belarus into the European Union.[4] In the Report, the Commission acknowledges that the screening of FDI and sanctions are two distinct legal instruments, each with a different purpose. However, in light of the conflict in Ukraine, the Commission calls for greater vigilance against Russian

[4] Communication from the Commission 'Guidance to the Member States concerning foreign direct investment from Russia and Belarus in view of the military aggression against Ukrain and the restrictive measures laid down in recent Council Regulations on sanctions, to consult on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0406%2808%29.

and Belarusian FDI into the EU. This would apply not only to individuals or entities currently subject to sanctions in the EU but also to any investment directly or indirectly related to a person or entity associated with, controlled by or subject to influence by the Russian or Belarusian government into critical assets in the EU that may pose a threat to security or public order in a Member State.

Factsheets

The following subchapters contain detailed descriptions of the laws and regulations applicable to FDI in the relevant European Member States. Such subchapters should be read in conjunction with the foregoing and terms defined in this chapter have the same meaning when used in each of its subchapters.

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4.1. Austria

This factsheet should be consulted in conjunction with Chapter 4 (*European Union*) and terms defined in Chapter 4 have the same meaning when used in this factsheet.

This factsheet is relevant for investments and acquisitions in Austria in the following markets:

- **Energy**
- **(Information) technology**
- **Transportation**
- **Health**
- **Food**
- **Telecommunications**
- **Data processing or storage**
- **Defence**
- **Finance**
- **Research institutions**
- **Social and distribution systems**
- **Chemical industry**
- **Land and Real Estate**

	Topic	Comment
1	A. Has the Regulation been implemented in national law? B. When did/do(es) the national law(s)/act(s) come into force? C. Does the national law have retrospective effect?	A. Implemented with the Investment Control Act ("**InvKG**"). B. Partially in force from 25.07.2020; Fully in force from 11.10.2020; C. No
2	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	InvKG covers direct and indirect investments, contains a long list of sensitive sectors with very broad categories, the relevant threshold of voting rights is 25 % (if the Austrian target company is active in a "normal" sensitive sector) and 10 % (if the Austrian target company is active in a highly sensitive sector).
3	Which sectors and/or companies are covered by the Regulation and national legislation on FDI?	Part 1 Particularly sensitive areas (From 10 % of voting rights Subject to approval) 1. defence equipment and technologies 2. operation of critical energy infrastructure 3. operating critical digital infrastructure, especially 5G infrastructure 4. Water 5. Operating systems that guarantee the data sovereignty of the Republic of Austria 6. Research and development in the fields of pharmaceuticals, vaccines, medical devices and personal protective equipment.

		Part 2 Other areas in which there may be a threat to security or public order, including crisis management and services of general interest within the meaning of Articles 52 and 65 TFEU 1. critical infrastructures (facilities, systems, plants, processes, networks or parts thereof); these include in particular: 1.1. energy 1.2. information technology 1.3. traffic and transportation 1.4. health 1.5. food 1.6. telecommunications 1.7. data processing or storage 1.8. defence 1.9. constitutional institutions 1.10. finance 1.11. research institutions 1.12. social and distribution systems 1.13. chemical industry 1.14. Investments in land and real estate essential for the use of the infrastructures referred to in 1.1. to 1.13. above 2. Critical technologies and dual-use items as defined in Article 2(1) of Regulation (EC) No 428/2009, including. 2.1. artificial intelligence 2.2.robotics 2.3.semiconductors 2.4. cyber security 2.5. defence technologies 2.6. quantum and nuclear technologies 2.7. nanotechnologies 2.8. biotechnologies 3.Security of supply of critical resources, including. 3.1. energy supply 3.2. Raw material supply 3.3. Food supply 3.4. Supply of pharmaceuticals and vaccines, medical devices and personal protective equipment, including research and development in these areas 4. Access to sensitive information, including personal data, or the ability to control such information 5. Freedom and plurality of the media.
4	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	1. Application without undue delay after the conclusion of the contract under the law of obligations for the acquisition of the enterprise or the participation or upon the conclusion of the legal transaction(s) required for the acquisition of the controlling influence or the asset components, or in the case of a public offer, without undue delay

		after announcement of the intention to make an offer. 2. Phase 1 (EU cooperation mechanism) [up to 60 days] – mandatory step before the national proceedings are initiated. 3. Phase 2 (national proceedings) [up to 1 month] starts right after the the EU-cooperation mechanism proceedings have been completed . 4. Phase 3 (In-depth investigation) [up to 2 months] online initiated if the competent authority sees the need for further investigations. 5. Conclusion of the procedure with a decision of the authority.
5	What are the main other features in relation to FDI that investors should be concerned with?	Any acquiring entity or the target enterprise may apply to the competent authority for the issuance of a clearance certificate for a specific direct investment before the transaction is carried out. The scope of application of the InvKG is very narrow compared to the regulation. The InvKG and the Annex to the InvKG sets out a long list of sensitive sectors with immensely broad categories. All cases under the InvKG are submit to the EU cooperation mechanism from Austria.
6	Does the national law on FDI-screening only apply to foreign direct investments from outside the EU (as required by the Regulation) or does it (indirectly) also apply to foreign direct investments from other EU-member states?	EU investors and greenfield investments are not included in the scope of the InvKG.
7	Which are the relevant institutions regarding an FDI-screening under the national law?	Decisions are issued by the Federal Minister for Labor and Economy (BMAW).
8	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are the consequences for the (pending) transaction during the screening?	Verification of whether a foreign direct investment may lead to a threat to security or public order, including crisis management and services of general interest within the meaning of Art. 52 and Art. 65 TFEU. Review of the business activities (including products, services and business operations) of the acquirers and the target company. Verification of the planned transaction and the exact ownership and shareholding structure in the target company, including the relevant voting rights.

		Verification of the financing of the direct investment and the origin of these financing funds. Verification that the transaction has or may have an impact on a project or program of Union interest. Any person who carries out a direct investment requiring an approval without an approval, or who violates a condition in a approval notice, or who obtains an approval or a clearance certificate by providing incorrect or incomplete information, or who obstructs the imposition of conditions in an approval notice, shall be punished by the court with imprisonment of up to one year. Legal transactions relating to transactions for which approval is required on the basis of the InvKG are deemed by law to have been concluded subject to the condition precedent that approval is granted. In addition, whoever intentionally violates the duty to notify shall commit an administrative offense and shall be punished by imprisonment of up to six weeks or a fine of up to € 40,000.
9	What are the possible outcomes of an FDI-screening by the designated (national) authority?	Approval, approval with conditions, or prohibition of transaction.
10	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	Legal transactions relating to transactions for which approval is required on the basis of the InvKG are deemed by law to have been concluded subject to the condition precedent that approval is granted.
11	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	No.

4.2. Belgium

This factsheet should be consulted in conjunction with Chapter 4 (*European Union*) and terms defined in Chapter 4 have the same meaning when used in this factsheet.

This factsheet is relevant for investments and acquisitions in Belgium amongst others in the following markets:

- **Energy**
- **Defence**
- **Cyber security**
- **Electronical communication**
- **Digital infrastructures**
- **The vital infrastructures (albeit physical or virtual) for energy, transportation, water, health, electronical communication and digital infrastructures**
- **Media**
- **Data processing or storage**
- **Air- and space travel and defence**
- **Finance**
- **Technology**

	Topic	**Comment**
1	A. Has the Regulation been implemented in national law?	A. The Regulation has been implemented into national law through the conclusion of a cooperation agreement (hereinafter: '**the Cooperation Agreement**') between the Belgian Federal State, the Flemish Community, the French Community, the German Community, the Joint Community Committee, the Flemish Region, the Walloon Region and the Brussels-Capital Region. The reason for the multitude of governments involved is the division of competences in Belgium. All governments in Belgium needed to undersign the Cooperation Agreement in order for all competence areas to be covered.
	B. When did/do(es) the national law(s)/act(s) come into force?	B. The Cooperation Agreement was concluded on the 30th of November 2022 and entered into force on the 1st of July 2023.
	C. Does the national law have retrospective effect?	C. No, only transactions and investments from the 1st of July 2023 onwards fall within the scope of the new Cooperation Agreement.
2	Which sectors and/or companies are covered by the	This depends on the participation that the FDI pursues in a company.

	Regulation and national legislation on FDI?	If the FDI would entail that 10% of the voting rights in a company or entity are obtained (directly or indirectly), the acquisition of voting rights in companies or entities whose activities touch upon the following are regulated: - Defence, with the inclusion of products of dual-use - Energy - Cyber security - Electronical communication - Digital infrastructures **Insofar** as the annual turnover of the company or entity in the financial year preceding the acquisition of at least 10% of the voting rights exceeded EUR 100 million If the FDI would entail that 25% of the voting rights in a company or entity are obtained (directly or indirectly), the acquisition of voting rights in companies or entities whose activities touch upon the following are regulated: - The vital infrastructures (albeit physical or virtual) for energy, transportation, water, health, electronical communication and digital infrastructures - Media - Data processing or storage - Air- and space travel and defence - The voting infrastructure or the financial infrastructure - Sensitive installations, whether or not they are part of an existing company, as well as grounds and buildings which are of crucial importance to such infrastructures, including the critical infrastructures as specified in Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council, also as specified in the Act of 1 July 2011 concerning the security and protection of the critical infrastructures and also as specified in the Royal Decree of 2 December 2011 concerning the critical

		infrastructures in the subsector of aerial transportation.
		- The technologies and raw materials which are of vital importance for:
		  ○ Safety (including health safety)
		  ○ National defence or the maintenance of public order and whose disruption, loss or destruction would have significant consequences for Belgium, an EU Member State or the EU as a whole
		  ○ Military equipment which is subject to the 'Common Military List' and national control
		  ○ Dual-use items as defined in Article 2(1) of Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items
		  ○ Technologies of strategic importance (and related intellectual property) such as artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, and nanotechnologies
		- The supply of critical inputs, including energy or raw materials, as well as food security
		- The access to sensitive information, as well as personal data, or the ability to control such information
		- The sector of private security
		- The freedom and plurality of the media
		- The technologies of strategic importance in the biotechnology sector, provided that the company's turnover, in the financial year preceding the acquisition of at least 25% of the voting rights exceeded EUR 25 million

3	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	No. There was an old cooperation agreement between the Belgian Federal State, the Flemish Region, the Walloon Region and the Brussels-Capital Region, but this seems to be rendered obsolete due to the newly concluded Cooperation Agreement.
4	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	A foreign investor who wishes to invest in a company or entity as specified under question 2 and whose total voting rights exceed the threshold of 10% or 25% depending on the activities of the company or will get passive control over the company because of this upcoming investment, has the obligation to report the intention to invest to the Interfederal Screening Committee (hereinafter: '**ISC**') through its secretariat. For the acquisition of shares on the stock market, the notification has to happen at the latest on the moment of the acquisition. The notification has to include the following information: - The ownership structure of the foreign investor and of the company in which the FDI will happen or has happened - The estimated value of the FDI and the method through which the value was determined - The products, services and activities of on the one hand, the foreign investor and its controlling entities, including the entities which are controlled by the controlling entity of the foreign investor and, on the other hand, those of the company in which the FDI will take place or has taken place - The member states of the EU and the third countries in which, on the one hand, the foreign investor and its controlling entities, including the entities which are controlled by the controlling entity of the foreign investor, execute relevant activities and, on the other hand, those in which the company in which the FDI will

		take place or has taken place executes relevant activities - The financing of the investment and its origin - The date or the planned date of the conclusion of the investment After the notification to the secretariat of the ISC, the secretariat shares the information with the competent members of the ISC and with the Coordination Committee Intelligence and Safety (hereinafter: '**CCIV**'). The CCIV only has an advisory role and can give an advice to the members of the ISC. The competent members of the ISC are determined by the territorial and substantive competence of their overseeing government. The secretariat of the ISC also shares a brief summary of the notification with the members of the ISC which are not thought to be competent on the matter. If these members deem to be competent nonetheless, they can ask the file in full. The notifier will also receive an announcement that the file on the notification is complete and that the file is deemed to be admissible. The date of this announcement serves as the start of the time limits as specified below. After the file has been received by the competent members of the ISC, a review procedure is conducted. During this first procedure, the members of the ISC review whether or not the acquirement of the control or the important changes in the ownership structure which stem from the acquirement have a possible impact on public order, national security or the strategic interests. They will also review if the key characteristics of the foreign investor have a possible impact on public order, national security or the strategic interests. If one of the members of the ISC is of the opinion that there might be a possible danger for public order, national security or the strategic interests, the screening procedure is opened. The decision

		to conclude the review procedure positively or to open a screening procedure has to be made within 30 days. When a screening procedure is opened, the secretariat of the ISC informs the other member states of the EU and the European Commission in accordance with the Regulation. The screening procedure builds on the findings of the review procedure and contains a concrete risk analysis. The screening procedure ends with an advice to the competent Minister, who in turn will make a decision whether or not to allow the FDI or not. The decision of the Minister can be disputed before the Market Court, a special division of the Court of Appeal in Brussels that only deals with disputes involving decisions of regulators and administrative authorities in the field of economic law, financial law and market law. The appeal at the Market Court is a 'one instance jurisdictional appeal'.
5	What are the main other features in relation to FDI that investors should be concerned with?	It is important to note that the threshold of 10% or 25% is not calculated on a transactional basis. For example, if a foreign investor already has 9% of the voting rights in a company which falls with the scope of the mandatory notification requirement starting from 10% of the voting rights and the investor acquires another 2%, the investor will have to file a notification, as the total voting rights exceed 10%. Even if only a part of the company in which the foreign investor wishes to invest concerns activities as specified under question 2, it is mandatory to file a notification.
6	Does the national law on FDI-screening only apply to foreign direct investments from outside the EU (as required by the Regulation) or does it (indirectly) also apply to foreign direct investments from other EU-member states?	It indirectly also applies to FDI from other EU member states, as an FDI is also defined as an investment made by a company of which the ultimate beneficial owners reside outside the EU. In this case, it doesn't matter that the company itself is an EU-based company.

7	Which are the relevant institutions regarding an FDI-screening under the national law?	The review and screening procedures are executed by the competent members of the Interfederal Screening Committee. The ISC is comprised of members who represent the different governments of Belgium (as illustrated under question 1). The president of the ISC is a representative of Federal Government Service of Economy, SME, Middle Class and Energy. However, the president does not get a vote in the decision-making process. The secretariat of the ISC also resides under the Federal Government Service of Economy, SME, Middle Class and Energy.
8	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are the consequences for the (pending) transaction during the screening?	The members of the ISC deliver their advice on the basis of considerations involving public order and national security on the one hand and strategic interests on the other hand. These considerations are made by assessing the following risks: 1. The impairment of the continuity of vital processes as listed above in question 2 which, in the event of failure or disruption, leads to serious social dislocation and threatens national security, strategic interests and the quality of life of the Belgian population 2. The impairment of the integrity and/or exclusivity of knowledge and information associated with vital processes as listed above in question 2 and the high-quality sensitive technology required for that purpose 3. The emergence of strategic dependencies During the screening process, the transactions are put 'on hold'. The foreign investor cannot execute or complete the FDI during the screening process.
9	What are the possible outcomes of an FDI-screening by the designated (national) authority?	The ISC will give an advice to the competent Minister in every case where a screening procedure is initiated. This advice can be positive or negative, or positive because of the fact that

		the foreign investor has agreed to remedial measures.
10	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	A penalty under the form of an administrative fine can be incurred. The amount of the fine can be between maximum 10% and maximum 30% of the amount of the FDI depending on the concrete infraction.
11	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	Investments concerning the establishment of new economic activities by a foreign investor, without the foreign investor taking over existing economic activities, do not fall within the scope of the Cooperation Agreement.

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4.3. Czechia

This factsheet should be consulted in conjunction with Chapter 4 (*European Union*) and terms defined in Chapter 4 have the same meaning when used in this factsheet.

This factsheet is relevant for investments and acquisitions in Czechia amongst others in the following markets:

- **Energy**
- **Water management**
- **Food and agriculture**
- **Healthcare**
- **Communication and information systems**
- **Finance**
- **Technology**
- **Defence**

	Topic	Comment
1	A. Has the Regulation been implemented in national law? B. When did/do(es) the national law(s)/act(s) come into force? C. Does the national law have retrospective effect?	A. Yes, the implementation was carried out by Act No. 34/2021 Col., on foreign investment examination and related laws ("**FDI Act**"). B. The FDI Act entered into force on 1 May 2021. C. Partially yes. Unless the investment was finished within the meaning of Section 27 of the FDI Act before 1 May 2021, it should be reviewed under the FDI Act.
2	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	The FDI Act is more detailed and extends the legal regulation contained in the Regulation.
3	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	The FDI Act distinguishes between: a) foreign investments in critical areas defined in the FDI Act requiring a prior approval or a conditioned approval before the investment can be started and b) foreign investment in all other areas where security or public order might be affected in the case of which the authority can examine the investment up to 5 years after the investment was finished. The investor can ask voluntarily for the review of the investment in non-critical areas in order to avoid the later review and prohibition of the investment.

		The decision about approval of the investment, if there are no security or public order issues, is issued within 90 days upon the commencement of the procedure. In case there are any issues on security or public order, the Government of the Czech Republic gives its opinion within 45 days upon being the case submitted by the Ministry whether the investment contravenes security or public order. Once the Government opinion is given, the decision is taken without undue delay.
4	What are the main other features in relation to FDI that investors should be concerned with?	If the investor has any doubt whether the investment might or nor fall into the scope of the FDI review, the voluntary application for the approval is recommended because if the investment is commenced and the authority comes to the conclusion that the investment contravenes the security or public orders, there will be no compensation for the investment made.
5	Does the national law on FDI-screening only apply to foreign direct investments from outside the EU (as required by the Regulation) or does it (indirectly) also apply to foreign direct investments from other EU-member states?	No, the law concerns foreign investments done by: a) an individual who is neither a Czech citizen nor a citizen of the EU-Member State; b) an entity which is neither seated in the Czech Republic nor in another EU-Member State; or c) an investor who is directly or indirectly controlled by a person listed under a) or b). The regulation is broader so that the regulation cannot be circumvented by investing through a shell company seated in an EU-Member State.
6	Which are the relevant institutions regarding an FDI-screening under the national law?	The main authority charged with the review of the foreign investment is the Ministry of Industry and Commerce of the Czech Republic (Ministry). The Ministry should consult Ministry of Defence, Ministry of Foreign Affairs, Police of the Czech Republic, Czech National Bank, Ministry of Finance, intelligence agencies and or as case may be other state institutions before decision about the investment. The final opinion on the investment is given by the Government of the Czech Republic if there are any security or public order issues.
7	If a transaction is subject to a screening, which criteria does the designated (national)	The Ministry reviews the investment whether the security or public order in the Czech Republic can be affected. The investment is considered

	authority check and what are the consequences for the (pending) transaction during the screening?	from many aspects, in particular, ownership structure and associated entities, sources of financing, information on products and services. The investment cannot proceed while the review is undertaken. If the review is undertaken retrospectively, the investment can continue until the decision is adopted.
8	What are the possible outcomes of an FDI-screening by the designated (national) authority?	The possible outcomes are: a) The investment is approved without conditions; b) The investment is approved with conditions c) The investment is not approved or is prohibited; The continuation of the already made investment is prohibited.
9	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	The Ministry can sanction the investor with the penalty amounting to 1% or 2 % of the net turnover of the foreign investor for the last accounting period depending on the stipulation which was violated. Besides, if a decision was issued and intentionally disobeyed, criminal proceedings might be initiated.
10	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	N/A

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4.4. Germany

This factsheet should be consulted in conjunction with Chapter 4 (*European Union*) and terms defined in Chapter 4 have the same meaning when used in this factsheet.

This factsheet is relevant for investments and acquisitions in Germany amongst others in the following markets:

- **Critical infrastructure software**
- **Telecommunications monitoring**
- **Cloud computing**
- **Telematics infrastructure**
- **Media industry**
- **Services for government communication infrastructures**
- **Medical/pharmaceutical industry**
- **Other critical industries**
- **Critical raw materials**
- **Food security**

	Topic	Comment
1	General: A. Has the Regulation been implemented in national law? B. When did/do(es) the national law(s)/act(s) come into force? C. Does the national law have retrospective effect?	A./B. The implementation of Regulation 2019/452 into national German law was initially effected by the 1st amendment to the Foreign Trade and Payments Act and the 16th amendment to the Foreign Trade and Payments Ordinance (AWV) of 10 July 2020 and 28 October 2020, respectively, which adapted the Foreign Trade and Payments Act and the AWV to key elements of the EU Screening Regulation. With the 17th AWV amendment - which came into force on 1 May 2021 - this implementation process was finally completed. The corresponding implementation measures initially had the effect of extending the review criterion of the German investment appraisal to public policy or public security of other EU Member States as well as in relation to certain EC/EU projects and programs. This extension of the standard of review was a prerequisite for Germany's participation in the new EU-wide cooperation mechanism, which became active when the EU Screening Regulation came into force, in accordance with its Art. 6 et seq.

		Furthermore, the standard of review of the German investment appraisal has been modified in that the previous wording "is endangered" has been replaced by "public order or security … is likely to be impaired". The German legislator has implemented Art. 4 of the EU Screening Regulation in such a way that it has significantly expanded the catalogue of sectors and technologies - which it classifies as particularly security-relevant in the new § 55 a AWV - on the basis of the factors mentioned there. C. No.
2	Which sectors and/or companies are covered by the Regulation and national legislation on FDI?	In principle, all sectors/enterprises are subject to German foreign direct investment law pursuant to § 55 para. 1 i. In conjunction with § 56 para. 1 subpara. 3 AWV, all sectors/enterprises are subject to German legislation on foreign direct investment. A prerequisite for this, according to the aforementioned regulations, is that the foreign participation reaches or exceeds at least 25% of the voting rights in the target company. In addition to the highly sensitive sectors referred to in Section 60 of the AWV, such as defence equipment, encryption technologies and other important defence technologies, business activities in the sectors listed in the catalogue of Section 55a (1) AWV are considered to be particularly security relevant and therefore subject to notification pursuant to Section 55a (4) AWV. These are: Critical infrastructure • Critical infrastructure software • Telecommunications monitoring • Cloud computing • Telematics infrastructure • Media industry • Services for government communication infrastructures • Medical/pharmaceutical industry

		• Other critical industries (AI, robotics, semiconductors, nuclear, aerospace, quantum, satellites, additive manufacturing, IT, etc.) • Critical raw materials • Food security (>1,000 hectares) Foreign participations in companies of this kind are therefore already subject to German investment control if the corresponding acquisition - depending on the sector - reaches or exceeds 10 or 20 % of the voting rights in the target company.
3	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	In Germany, the prerequisites and procedure for verifying foreign direct investments are regulated by the Foreign Trade and Payments Act (AWG), the Foreign Trade and Payments Ordinance (AWV), and the Ordinance on the Designation of Critical Infrastructures under the BSI Act (BSI-KritisV). This BSI-KritisV defines the term "critical infrastructure" - the operation of which by the target company pursuant to Section 55 a (4) in conjunction with (1) (1) and (2) AVW results in a foreign direct investment being subject to notification. The content of the aforementioned provisions is therefore to fill out the framework provided by EU Regulation 2019/452 with regard to screening mechanisms for foreign direct investment in the individual member states, see in detail our comments on question 3. The provisions of the AWV differ from EU Regulation 2019/452 in that they also contain provisions on indirect investments. Furthermore, the catalogue of company activities - which the German legislator considers to be particularly relevant to security in Section 55 a (1) (1-27) AWV - goes beyond the corresponding requirements in Article 4 of EU Regulation 2019/452.
4	Please summarize what an FDI-screening in your country entails	a.) Types of deals that are reviewed The activities of the target company and the "nationality" of the investor determine the

	and which timelines are maintained.	appraisal process. The examination of German direct investment includes both direct and indirect acquisitions by foreign investors. In addition, the BMWK is authorized to examine all types of acquisitions - including share deals and asset deals. b.) Distinction between cross-sectoral and sector-specific review process The AWV regulates two different procedures for the review of foreign investments: the cross-sectoral procedure of §§ 55 ff. AWV and the sector-specific procedure of §§ 60 ff. AWV. The sector-specific procedure concerns certain highly sensitive industries referred to in Section 60 of the AWV, such as defense equipment, encryption technologies and other important defense technologies. Foreign investments in other enterprises are subject to the regulations on the intersectoral procedure of §§ 55 et seq. AWV apply. These two procedures differ primarily with regard to their respective addressees, as well as the threshold values above which a foreign investment can be reviewed and possibly objected to by the BMWK. c.) Intersectoral review process In the scope of application of the cross-sectoral procedure of §§ 55 ff. AWV, this is only permissible if the foreign investor has its registered office outside the EU/EFTA (so-called "cross-sectoral review"). Furthermore, the investor's shareholding in the domestic company must reach or exceed a certain threshold of voting rights. How high this threshold is to be set depends on the activities of the target company. Section 55 a (1) AWV lists a catalogue of company activities that are considered by the German legislator to be particularly relevant to security. These sectors include, but are not limited to (as defined in great detail): • Critical infrastructure • Critical infrastructure software • Telecommunications monitoring • Cloud computing • Telematics infrastructure

		• Media industry • Services for government communication infrastructures • Medical/pharmaceutical industry • Other critical industries (AI, robotics, semiconductors, nuclear, aerospace, quantum, satellites, additive manufacturing, IT, etc.) • Critical raw materials • Food security (>1,000 hectares) In the case of companies of the type referred to in Section 55a(1)(1)-(7) AWV, the BMWK's power to review the foreign investment pursuant to Section56a(1)(1) AWV requires the acquisition of a shareholding of at least 10% of the voting rights. In the case of the enterprises referred to in section 55a(1)(8)-(27) AWV, this threshold is 20% of the voting rights pursuant to section 56a(1)(2) AWV. In the case of enterprises that are active in sectors that are not mentioned in section 55 a para. 1 AWV, the BMWK is only authorised to review foreign investments pursuant to section 56 a para. 1 subpara. 3 AWV if at least 25% of the shares are acquired. In assessing these investment thresholds, the BMWK takes a broad approach and considers all companies in the entire acquisition chain (without dilution of shareholdings) from the immediate acquirer to the ultimate parent company and arguably also shareholders such as limited partners (which must be assessed on a case-by-case basis). Furthermore, for the purpose of deciding whether the investment thresholds of section 56(1)(1-3) AWV have been reached, any voting shares held by third parties with whom the acquirer has entered into agreements on the joint exercise of voting rights shall also be attributed to a foreign acquirer pursuant to section 56(4)(2) AWV. The same shall apply if other circumstances of the acquisition give reason to expect a joint exercise of voting rights. Other circumstances of the acquisition in this sense are presumed pursuant to section 56 (4) sentence 3 in conjunction with section 55 a (1) subsection 1 AWV if the acquirer is directly or indirectly controlled by the government - including other government agencies or armed forces of a third country.

		Additional audit powers of the BMWK are triggered if there is an increase in the voting rights of non-EU/EFTA resident investors in domestic companies to the corresponding thresholds of Section 56(2)(1-3) AWV. Insofar as the acquired participations concern companies that are active in the area of the catalogue of particularly security-relevant business activities regulated in section 55 a para. 1 AWV, reaching the threshold values regulated in section 56 a para. 1 subpara. 1 and subpara. 2 respectively results in the corresponding purchase agreement having to be registered with the BMWK pursuant to section 55 a para. 4 AWV. The addressee of this notification obligation is the direct acquirer in each case. This also applies in cases where the direct acquirer is not a non-EU citizen but an acquisition vehicle established under the company law of an EU Member State. Pursuant to § 15 paras 3 and 4 AWG, the registration of such a foreign shareholding with the BMWK now leads to its participants being subject to a provisional standstill obligation with regard to the execution of the corresponding acquisition transaction. In particular, the domestic target company is provisionally prohibited from allowing the foreign acquirer to exercise voting rights directly or indirectly or from granting the investor access to certain sensitive data before clearance has been granted or is deemed to have been granted. For foreign participations in other types of companies - with regard to which the BMWK also has the power of examination pursuant to Section 56 a (1) (3) AWV as of the acquisition of a share of voting rights of at least 25 % - the state has a right of termination if the execution of the transaction is expected to impair public security or order in Germany, another EU member state or certain EU programmes. In addition, outside of the transactions described above - which trigger a compulsory notification by the foreign investor pursuant to Section 55 a (4) AWV - the BMWK can also review such foreign investments with regard to a possible impairment of public order or security that lead to an "atypical" control of a domestic enterprise. Specifically, according to Section 56(3) AWV, these are constellations in which the thresholds

		for the acquisition of voting shares in a domestic company specified in Section 56(1) AWV are not reached, but the corresponding investor obtains an effective share in the control of the company in another way. Typical forms of such participation are the additional assurance of additional seats or majorities in supervisory bodies or in the management, the granting of veto rights in strategic business or personnel decisions or access to particularly important or sensitive company-related information. These additional possibilities of influence must result in the foreign investor being able to participate in the control of the domestic target company to be assessed, which corresponds to the share of voting rights provided for the respective company in Section 56 (1) AWV. c.) Sector specific test method The sector-specific examination procedure of § 60 ff. AWV applies to all foreign participations in domestic companies that are active in the highly sensitive sectors referred to in Section 60 AWV, such as defence equipment, encryption technologies and other important defence technologies. Unlike in the case of the cross-sectoral review procedure, the existence of a corresponding power of review by the BMWK therefore does not require that the foreign investor - who participates in domestic companies of this type - has its registered office outside the EU/EFTA. Also in the area of the sector-specific review procedure, foreign investments in domestic companies are only subject to the review power of the BMWK if the corresponding investment reaches or exceeds a certain threshold of voting rights. This threshold value is uniformly 10% for all of the areas of activity of domestic companies referred to in Section 60 AWV pursuant to Section 60 a (1) AWV. Furthermore, pursuant to Section 60 a (2) AWV, the provisions of Section 56 a (2-5) AWV - regarding existing review powers of the BMWK in the case of increases in voting rights and atypical corporate control, as well as the attribution of voting rights agreements of the acquirer or other possibilities of indirect influence by the acquirer - apply accordingly to the sector-specific review procedure. The same applies to the notification

		and standstill obligations of the acquirer or the parties involved, which intervene in each case when the voting rights specified in Section 60 a (1) AWV are reached or exceeded. d.) Standard of review The standard of review for the German FDI review is in each case the question of whether the corporate investment to be reviewed is likely to impair the public order or security (essential security interests) of the Federal Republic of Germany, another EU Member State or in relation to specific projects or programmes of Union interest. Pursuant to § 55 a para. 3 subpara. 1 and § 60 para. 1 b subpara. 1 AWG, the origin of the investor and the question of whether the investor is controlled by foreign governments - including other state agencies or armed forces - are of particular relevance for the assessment of this question. Control in this sense can be exercised in particular on the basis of the ownership structure or in the form of a financial endowment by the government or other state agencies of a third country - which goes beyond a de minimis level. Another important criterion for the assessment of a possible impairment of public order or security concerns by the intended investment is the track record of the parties involved in previous BMWK submissions. In addition, general political considerations - such as securing supply chains or industrial policy - play an increasingly important role. e.) Intervention options of the BMWK In order to protect public order or security, the BMWK - in agreement with other federal ministries - can prohibit transactions or release a transaction subject to remedial measures or "remedies". These usually take the form of a trilateral public-law agreement between the ultimate acquirer, the target company and the German Federal Government ("Mitigation Agreement"). Subsidiarily, the BMWK can also impose corresponding measures unilaterally. Its content depends on the concerns to be resolved and may include securing the supply volume prior to the transaction, not relocating facilities/know-how, reporting obligations, etc. To enforce a prohibition, the BMWK may prohibit or restrict the

		exercise of voting rights in the acquired company or appoint a trustee to bring about the settlement of a completed acquisition at the expense of the acquirer. f.) Procedure The cross-sectoral and sector-specific review procedures for FDI in Germany are regulated in Sections 55 et seq. and 60 et seq. AWV for FDI in Germany are each divided into 2 phases: Phase I begins when the FMEA becomes aware of the transaction (either through notification or otherwise) and lasts up to two months pursuant to Section 14 a (1) (1) AWG, during which the FMEA decides whether to initiate a formal review (Phase II) or to clear the transaction. Within this period, the parties affected by the transaction must be notified of any decision by the BMWK to open a formal investigation pursuant to Article 55(3) or 60(4) AWG. If the BMWK decides to do so, Phase II begins with the MMWK requesting further documentation on the transaction pursuant to Section 14 a (2) AWG, the scope of which is at the broad discretion of the BMWK. The formal review procedure then begins upon receipt of these documents and lasts a further four months pursuant to section 14 a para. 1 subpara. 2 AWG; however, the BMWK may extend this period by a further three months in particularly complex cases (plus a further additional month in the case of defence transactions). Furthermore, this review period for Phase II will be suspended in the event of additional requests for information by the BMWK and for the duration of negotiations on mitigation measures between the BMWK and the stakeholders. Such considerations outside the official review schedule may therefore have a significant impact on the transaction schedules. g.) Release fiction If the Federal Ministry of Economics and Labour has not made a decision by the expiry of the deadlines specified in § 14 a para. 1 subpara. 1 and subpara. 2 AWG for the implementation of test phases I and II respectively, the transaction is legally deemed to have been approved.

5	What are the main other features in relation to FDI that investors should be concerned with?	a.) Definitions The term "domestic enterprise" within the meaning of Sections 55 et seq. AWV is based on the corresponding definition in section 2 (15) AWG. According to this, domestic enterprises are 1.) legal entities and partnerships with legal capacity with their registered office or place of management in Germany, 2.) branches of foreign legal entities or partnerships with legal capacity if the branches have their management in Germany and there is separate accounting for them, and 3.) permanent establishments of foreign legal entities or partnerships with legal capacity in Germany if the permanent establishments have their management in Germany. Non-Union residents" - whose investments are the subject of the cross-sectoral examination procedure of §§ 55 ff. AWV - are, according to the negative definition in Section 2 (19) AWV, all natural and legal persons as well as partnerships that are not EU residents within the meaning of Section 2 (18) AWG. Pursuant to Article 2 (18) AWG, Union residents are 1.) natural persons with their domicile or habitual residence in the European Union, 2.) legal persons and partnerships with legal capacity with their registered office or place of management in the European Union 3.) branches of foreign legal persons or partnerships with legal capacity if the branches have their management in the European Union and there is separate accounting for them, and 4.) permanent establishments of legal persons from third countries if the permanent establishments have their management in Austria. b.) Exception for intra-group restructuring The audit powers described in the explanations to 3. - which the BMWK has within the scope of the cross-sectoral audit of §§ 55 ff. AWV with regard to foreign shareholdings - certain intra-group restructurings are excluded pursuant to Section 55 (1 b) AWV. According to this provision, legal transactions under the law of obligations concerning the acquisition of a domestic enterprise by non-EU persons are exempt from the investment test of Sections 55 et seq. AWV if

		both contracting parties are wholly owned subsidiaries of a controlling foreign enterprise. In addition, both subsidiaries must have their place of management in the same third country. However, this exemption of intra-group restructurings from the BMWK's audit authority in relation to foreign shareholdings only applies insofar as the cross-sectoral audit procedure of sections 55 et seq. AWV is affected. If the planned investment concerns a domestic company that is active in the highly sensitive sectors referred to in Section 60 AWV, such intra-group restructurings are also subject to the review authority of the BMWK. c.) Circumventing transactions The intersectoral examination procedure - which in principle only concerns acquisitions by non-EU/non-EFTA foreigners - may exceptionally also apply to acquisitions by EU residents. This is provided for in Section 55(2) AWV in the event that there are indications that the acquisition of a domestic enterprise by a natural or legal person resident in the Union is made solely for the purpose of abusively circumventing the review by the BMWK provided for in Section 55(1) AWV for this purpose. The existence of corresponding indications is to be assumed in particular if such an acquirer resident in the Union - with the exception of the acquisition of a shareholding in a domestic company to be assessed - does not pursue any significant independent economic activity or does not maintain a permanent presence of its own within the European Union in the form of business premises, personnel or equipment. Furthermore, the circumstance that several acquisitions in the same domestic enterprise are coordinated in such a way that, when considered separately, none of the acquisitions constitutes a participation within the meaning of Section 56 AWV also points to an abusive arrangement or a circumvention transaction. In such constellations, an examination of foreign investments in shares of domestic companies may therefore be considered pursuant to Section 55 (2) sentence 6 AWV, even if these are below the thresholds provided for this in Section 56 AWV. Pursuant to Section 60 (2) AWV, the same principles apply to

		the sector-specific examination procedure with regard to circumvention transactions through formal shareholdings by nationals. d.) Certificate of clearance It is important for investors to obtain legal certainty regarding the feasibility of an intended participation in a company at an early stage. Within the scope of application of the cross-sectoral review procedure, it is therefore possible, in accordance with Section 58 (1) AWV, to have their harmlessness certified with regard to the concerns of public order and public safety to be examined in this context. However, this does not apply to transactions that are subject to a notification requirement under Section 55a (4) AWV, i.e. foreign participations in companies that are active in the sectors or technologies listed in Section 55a (1) (1-27) AWV, which are particularly relevant to security. For other types of acquisitions of shareholdings, such a clearance certificate can be requested from the BMWK in writing or via the e-mail address "investitionsprüfung@bmwi.bund.de", enclosing the information specified in Section 58 (1) sentence 2 AWV. A corresponding application form can be found on the BMWK website.
6	Does the national law on FDI-screening only apply to foreign direct investments from outside the EU (as required by the Regulation) or does it (indirectly) also apply to foreign direct investments from other EU-member states?	The German FDI test applies to transactions involving non-EU investors and, in certain cases, foreign (i.e. "non-German") investors, depending on whether the corporate investment to be assessed is subject to the cross-sectoral test of Sections 55 et seq. AWV, or the sector-specific examination procedure of §§ 55 ff. AWV, see explanations to 4). Non-EU investors within the meaning of the AWV and the AWG are parties registered in a country outside the European Union or the European Free Trade Association (EFTA). Branches and permanent establishments of a non-EU investor in the EU are also considered non-EU investors, as the focus is on the ultimate controlling company. Post-Brexit, this effectively means that UK-based companies are now considered non-EU investors and are subject to the German FDI regime. However, the FDI test may also apply to investments by EU investors if there is evidence

		of an attempted circumvention of the German FDI test, see our comments under 4 c.). Foreign nationals within the meaning of the AWV and the AWG are natural persons or legal entities with residence, habitual abode or registered office outside the Federal Republic of Germany. However, the FDI test may also apply to investments by German nationals if there are indications of an attempted circumvention of the German FDI test, see our explanations under 4 c.). In the case of a German investor, the transaction is only subject to the FDI test if the investor is controlled by a foreign parent company, e.g. a private equity fund registered and domiciled outside the EU/EFTA.
7	Which are the relevant institutions regarding an FDI-screening under the national law?	Under German law, the BMWK is exclusively responsible for the FDI review pursuant to Section 13 (2) cf. 2 c and d AWG.
8	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are the consequences for the (pending) transaction during the screening?	a.) Audit criteria of the BMWK As part of the FDI screening, the BMWK examines whether the company participation to be assessed is likely to impair the public order or security (essential security interests) of the Federal Republic of Germany, another EU member state or in relation to certain projects or programmes of Union interest. This is particularly likely if the foreign participation concerns a company that is active in the sectors listed in Section 55 a (1) AWV. The technologies listed in this catalogue are standard examples ("in particular") of company activities that are considered to be particularly relevant to security. In addition, the decision on this question is based in particular on the aspects listed in Section 55 a (3) AWV. Thus, the circumstance that the investor is controlled by foreign governments - including other state agencies or armed forces - speaks for the danger of an impairment of public order or security through a foreign participation in a company. Control in this sense can be exercised in particular due to the ownership structure or in the form of a financial endowment by the government or other state agencies of a third

		country - which goes beyond a minor level. Furthermore, the fact that the acquirer has already been involved in activities that have had a negative impact on the public order or security of the Federal Republic of Germany or another member state of the European Union is also a strong indication of this. Finally, the assessment of the risk of an impairment of public policy or public security by a foreign participation in an enterprise depends above all on factors lying in the person of the acquirer - or the persons acting on his behalf. In particular, according to Section 55 a (3) subsection 3 AWV, the fact that there is a considerable risk that the acquirer or the persons acting on his behalf were or are involved in activities that would fulfil one of the criminal offences mentioned in Section 123 GWB allows the conclusion to be drawn that the acquisition case poses an increased risk. The same applies to criminal offences or administrative offences under the AWG or the War Weapons Control Act. b.) Consequences of the audit by the BMWK The existence of an examination authority of the Federal Ministry of Economics and Labour with regard to a foreign participation in a company has the consequence that the corresponding legal transaction is pendingly ineffective, both for the area of the cross-sectoral and for the area of the sector-specific examination procedure, in each case pursuant to section 15 para. 3 AWG. *This in turn leads, pursuant to Section 15 (4) AWG, to its participants being subject to a provisional standstill obligation with regard to the completion of the transaction, see our comments under 3 c). The foreign participation may only be completed after the BMWK has cleared the acquisition or after the transaction has not been prohibited or cleared within the time limits set forth in Section 14a AWG.)* *The foreign participation may only be completed after the BMWK has approved the acquisition or has not prohibited the acquisition within the time limits regulated in § 14 a AWG or the approval of the acquisition is deemed to have been granted, see our explanations under 3 f) and g).*

9	What are the possible outcomes of an FDI-screening by the designated (national) authority?	Possible outcomes of FDI screening include: 1.) Explicit or implied release of the transaction as a result of the release fiction of section 14 a para. 1 AWG taking effect. 2.) Prohibition of the transaction If the BMWK prohibits the participation in a company that is the subject of the FDI screening, the corresponding acquisition transaction under the law of obligations may no longer be executed. In order to enforce such a prohibition, the FMEA may in particular prohibit or restrict the exercise of voting rights in the acquired company. In addition, the BMWK has the option of appointing a trustee to handle a completed acquisition at the expense of the acquirer. These legal consequences of a prohibition of foreign participation in a company within the meaning of Section 59 AWV are associated with a very high intensity of intervention. The BMWK can therefore only make use of this possibility if such a prohibition of the transaction is indispensable for reasons of security and order of the Federal Republic of Germany, of another EU Member State or in relation to EC/EU projects and programmes as defined in Art. 8 of the Screening Regulation. This is regularly not the case if the protection of the legal interests mentioned can be ensured by choosing a milder means. 3.) Imposition of conditions: In particular, the issuance of conditions can be considered as such a mitigating measure. § Section 59 AWV therefore provides for the issuance of orders as a third means of action by the BMWK with the purpose of ensuring sufficient compliance with public order and safety concerns in the execution of the participation in the enterprise. These include, for example, the obligation of the acquirer to maintain certain supply-relevant branches of production permanently or temporarily or to ensure the continued supply of certain goods or services for a defined period of time. Further typical objects of conditions for foreign shareholdings would be location guarantees, the obligation not to relocate

		certain branches of production abroad, or the obligation to treat certain technologies or certain know-how as confidential and not to pass them on to the acquirer or to third parties associated with the acquirer. Furthermore, it could be considered that the BMWK makes the release of such a transaction dependent on the spin-off of a security-relevant share of the target company prior to its execution. Such conditions are usually implemented by concluding a trilateral public-law agreement between the ultimate acquirer, the target company and the German government ("Mitigation Agreement"). In addition to the above-mentioned types of conditions, regulations on reporting and information obligations, audit rights of the Federal Ministry of Economics and Technology (BMWK), contractual penalty regulations and the submission of the acquiring parties to immediate enforcement are typical contents of such agreements.
10	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	Failure to comply with the notification requirements of Article 55a(4) and Article 60(3) AWV means that the time limits for the exemptions under Article 14a(1)(1) and (2) AWG do not begin to run. The consequence of this would therefore initially be that an implied release of the foreign participation in the company cannot be considered due to the inactivity of the BMWK. The corresponding legal transaction would be permanently invalid - due to the lack of an explicit or implied release - pursuant to Section 15 (3) AWG. This in turn would have the consequence that the parties to the transaction would be subject to a permanent standstill obligation within the meaning of Section 15 (4) AWG with regard to its execution. A violation of this obligation would make them liable to prosecution under Section 18 (1 b) AWG. In contrast, the mere failure to comply with the notification obligations of Section 55 a (4) or 60 (3) AWV does not constitute a misdemeanour. The non-submission of documents within the meaning of Article 14a (2) AWG or the submission of false information is also not listed in the

		catalogue of administrative offences or criminal offences under the AWG. However, the intentional submission of false documents within the meaning of Article 14a(2) AWG is likely to fulfil the general criminal offences of fraud under Article 263 StGB and possibly forgery under Article 267 StGB.
11	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	As far as can be seen, the obligations resulting from Regulation 2019/452 have been fully transposed into German law.

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4.5. Hungary

This factsheet should be consulted in conjunction with Chapter 4 (*European Union*) and terms defined in Chapter 4 have the same meaning when used in this factsheet.

This factsheet is relevant for investments and acquisitions in Hungary amongst others in the following markets:

- **Weapon industry / Defence**
- **Technology**
- **Finance**
- **Communication (digital, security and telecommunication)**
- **Insurance**

	Topic	Comment
1	1. Has the Regulation been implemented in national law?	A. The original regime is effective in Hungary from 1st of January 2019. It was enacted to protect the national security of Hungary by requiring a notification (approval) in certain sectors in case of foreign investments coming from non-EU countries, in line with similar EU legislations. The Regulation has been implemented into Hungarian national law by amended of the act on foreign direct investments.
	2. When did/do(es) the national law(s)/act(s) come into force?	B. On 4 December 2020 the amendment came into force (which implemented the Regulation).
	3. Does the national law have retrospective effect?	C. No, the acts do not have retrospective effect.
2	Which sectors and/or companies are covered by the Regulation and national legislation on FDI?	The acts apply to the following sectors and/or companies: • for the foreign investor to acquire ownership in the business company based in Hungary that carries out the activities listed below to the extent specified by law, or to gain influence in it, as well as • the foreign investor's share of ownership reaching the amount specified in the acts, or to the inclusion of the following activities by a business company operating under its specific influence, furthermore, • for a foreign investor to acquire the right to use or operate infrastructures, equipment and tools essential for

		carrying out the activities specified in in the list below (operating right), or • for the establishment of a branch in Hungary by a foreign investor for the following activities Activities: 1. weapon and ammunition production, production of military technology, equipment subject to authorization, 2. production of a dual-use product, 3. the production of intelligence tools specified in the relevant government decree on the detailed rules for the authorization of military technical activity and the certification of enterprises, 4. the provision of financial services defined in the relevant act and the operation of the payment system among additional financial services, 5. services covered by the relevant acts on electricity, gas, water utility services and electronic communications, 6. the creation, development or operation of electronic information systems falling under the scope of the relevant acts on electronic information security, 7. insurance activities. insurance and reinsurance activities according to law, as well as activities directly related to insurance activities. Please note that the scope of relevant activities is further narrowed down by the relevant government decree executing the act.
3	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	Yes, see section 1, subsection A. However, bilateral investment treaties concluded by Hungary operate on a reciprocal basis. Such agreements contain clauses designed to protect investments made by investors of either contracting party in the territory of the other contracting party.
4	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	The foreign investor shall notify in Hungarian the relevant minister within ten days from signing the contract or pre-contract targeting the acquisition of ownership or the right of operation. In the case of newly adopted activity in the company registry, the minister shall be notified within ten days of its registration.

		The minister informs the investor about the receipt of the notification within a maximum of eight days. After receiving the notification the Minister shall check that the notification complies with the requirements and examine whether the activities carried out by the investor may pose a real threat to national security interests. The minister notifies the investor within 60 days following the receipt of the notification and sends the acknowledgement of the acquisition of ownership, or the prohibition. In especially justified cases the term can be prolonged with 60 days. In the case of prohibition, the acquiring party shall not be entered in the share register or the membership rights cannot be exercised.
5	What are the main other features in relation to FDI that investors should be concerned with?	Based on the Hungarian legal regulations, examine whether the planned investment and/or acquisition or is it realized by gaining influence that kind of ownership or gaining influence, which is subject to notification under national law, so in particular - ownership structure and ownership ratios in the investor and the target company, their development after the investor's acquisition of shares - in addition to the interpretation of the concepts defined in Hungarian law (foreign investor, acquisition of ownership, majority influence, determining influence), - does the planned property acquisition reach the level specified in the law, - are the conditions for gaining decisive influence under Hungarian law fulfilled, - what types of companies are involved, the planned investment is an ownership share in a company practicing a range of activities listed in the law (deemed to be strategically important as such), or does it apply to gaining influence.
6	Does the national law on FDI-screening only apply to foreign direct investments from outside the EU (as required by the Regulation) or does it (indirectly) also apply to foreign direct investments from other EU-member states?	The national law does not only apply to “non-EU investments”, but also to investments from investors from other EU-member states.
7	Which are the relevant institutions regarding an FDI-screening under the national law?	The Minister who responsible for the management of civil national security services: conducting the procedure related to the notification; exercising the rights and fulfilling

		obligations defined for the member states in the acts and the FDI regulation. The Constitution Protection Office: monitoring of compliance with FDI-screening and reporting obligations. The Minister who responsible for foreign economic affairs: contact person/point as required by FDI.
8	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are the consequences for the (pending) transaction during the screening?	The current legislation is silent on as to whether a preliminary opinion may be obtained from the authorities, before the conclusion of the transaction documents, and performing the filing obligation. The authority may prohibit the notified transaction only if one of the following circumstances is present/met (i.e. he cannot prohibit on other grounds): (i) the acquisition by the purchaser of the ownership interest prejudice or threaten the national interest, public order or public security of Hungary; (ii) the purchaser is, directly or indirectly, under the control of a non-EU member state's government (including state bureaucracy and the armed forces), via its ownership structure or its material financing; (iii) the purchaser has been involved in any activity threatening public order or public security in any EU member state, including Hungary; or (iv) there is a material risk that the acquirer will conduct illegal or criminal activities. While the notification is under process, and it has not yet made any decision, the acquiring activity cannot be executed. In the case of a prohibitive decision, the foreign investor cannot be registered in the share register or member register of the Hungarian-based business company, and if already registered, she/he cannot exercise her/his membership.
9	What are the possible outcomes of an FDI-screening by the designated (national) authority?	• That there is no risk for the national security, meaning that no further review is required and acknowledgment the notification in writing, or • there is a risk for national security, meaning prohibit the acquisition activity.
10	What happens to a transaction if a party does not comply with the Regulation and/or national	In case the target and/or the acquirer is in breach with any of its obligations, such as not notifying the authority, they can be punished by a fine. The

	law (such as not notifying the designated national authority and/or not providing/incorrect information)?	amount of the fine can be from HUF 1,000,000 (approximately EUR 2,700) up to HUF 10,000,000 (approximately EUR 27,000) in case of legal entities and from HUF 100,000 (approximately EUR 270) up to HUF 1,000,000 (approximately EUR 2,700 in case of naturel person.
11	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	As far as we are aware, there are no exceptions applicable under Hungarian law to the obligations arising from the Regulation.

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4.6. Italy

This factsheet should be consulted in conjunction with Chapter 4 (*European Union*) and terms defined in Chapter 4 have the same meaning when used in this factsheet.

This factsheet is relevant for investments and acquisitions in Italy amongst others in the following markets:

- **Defence and national security**
- **Telecommunications / Communications**
- **Energy**
- **Transportation**
- **Water**
- **Health**
- **Data treatment**
- **Technology**
- **Finance**
- **Aerospace**
- **Media**

	Topic	Comment
1	A. Has the Regulation been transposed into national law? B. When did/do(es) the national law(s)/act(s) come into force? C. Does the national law have retrospective effect?	A. Regulation 452/2019 is effective and directly applicable in Italy without the need for any further legislative act. It should be pointed out that Italy, prior to the adoption of the FDI Regulation, had already enacted a law that gave the Italian Government the power to impose specific conditions on or veto transactions that could threaten essential Italian public interests, in particular Law Decree 21/2012 so called "**Golden Power Act**". B. On 11 October 2020 the Regulation 452/2019 came into force.
2	Which sectors and/or companies are covered by the Regulation and national legislation on FDI?	The Golden Power Act applies to the following sectors and/or companies: (i) Defence and national security; (ii) Telecommunications (in particular 5G); (iii) Civil sectors as: 1. energy; 2. transports; 3. communications; 4. water;

		5. health with respect to IP rights; 6. data treatment; 7. financial infrastructures (e.g. trading platforms, paying systems); 8. AI, Robotics, cybersecurity semiconductors, nano- and biotechnologies; 9. Aerospace; 10. Media. In addition to the above, Italy has introduced a separate legal framework, mainly deriving from European sources, with respect to Dual Use products and industries.
3	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	Yes, Italy has had FDI regulations for a long time, even before the Golden Power Act. The current legal framework is composed of a main legislative text, namely Legislative Decree 21/2012, as well as several ancillary and/or supplementary legislation, in particular: 1. Law Decree 21 September 2019 n. 105; 2. D.P.C.M. 6 June 2014, n.108; 3. D.P.R. 19 February 2014, n.35; 4. D.P.C.M. 23 December 2020, n. 180; 5. D.P.C.M. 18 December 2020, n. 179; 6. D.P.R. 25 March 2014, n. 86; 7. D.P.C.M. 1 August 2022. This additional legislation provides a legal basis for the Italian government to scrutinize and, if necessary, block foreign direct investments. It sets the procedures to be followed as well as the specific powers afforded to the Italian authorities in this respect.
4	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	<u>The pre-notification</u> In view of the ever-increasing number of notifications received by the Presidency of Council of Ministers, a pre-notification procedure has been introduced as of 9.9.2022 by DPCM 01/08/2022, through which it is possible to receive indications from the competent office as to the applicability of the Golden Power Act as well as a preliminary assessment on whether or not the transaction would require an authorization before it is implemented. The Government may provide its response within 30 days (in the absence of a response within the deadline, formal notification must be made), which may have the following outcomes: (i) the transaction does not fall within the scope of the Golden Power legislation;

		(ii) the transaction falls within the scope of application of the Golden Power legislation, but the Government considers that the conditions for the exercise of the special powers are manifestly lacking; (iii) the transaction falls within the scope of the Golden Power legislation and therefore a formal notification must be made. <u>The Notification</u> If the outcome of the prenotification requires that a formal notification be made or if the company believes that a formal notification is required and therefore doesn´t go through the pre-notification process, the Golden Power Act establishes that an exhaustive appraisal and report shall be presented to the Presidency of the Council of Ministers which then must notify its decision within 45 days. If the Presidency of the Council of Ministries makes a request for additional information to the company, the above deadline will be suspended (just once) until receipt of the requested information, which the company must provide within 10 days. If it becomes necessary to make enquiry requests to third parties, the aforesaid deadline of 45 days shall be suspended (just once) until receipt of the requested information, which such third party must provide within 20 days. Further requests for information shall not suspend the deadline. In the event of incomplete notification, the period of 45 days provided for shall begin upon receipt of the information or elements supplementing it. After the expiry of this deadline, the transaction may be executed. The resolutions or acts adopted in violation of the notification will be null and void and may be subject to sanctions (see hereunder). In conclusion, the company and the purchaser must notify the Italian Government before the transaction is concluded or becomes effective. From a practical point of view, in case of a purchase of shares, the parties usually enter into a sale purchase agreement subject to the condition precedent of prior screening as well as the issuance of a positive decision by the competent authorities. In such case the above

		mentioned notification must be made within 10 days from the signing of the SPA. The decisions of the Presidency of the Council of Ministries can be challenged in front of the Administrative Court (TAR). The notification, which is submitted using a form provided by the relevant law, must include at least the following documents: (i) in the case of the adoption of resolutions of the shareholders' meeting or of the administrative bodies, the text of the resolution, complete with all the documentation transmitted to the corporate bodies for its adoption, as well as all the information enabling the Government to make its assessment (ii) in the case of an acquisition, the industrial project pursued by the acquisition subject to notification, together with the corresponding financial plan and a general description of the proposed acquisition and its effects, as well as detailed information on the purchaser, its sphere of operations, as well as all information enabling the assessments to be made. In case a conditional SPA has been signed, also such agreement. The notification must also contain: the special power of attorney (e.g. to a legal advisor); the name and contact details of the legal or natural person to be notified of any request for additional information, the commencement of any other sub-proceeding or any act of exercise of special powers; an indication that the notification is made in accordance with the applicable law.
5	What are the main other features in relation to FDI that investors should be concerned with?	Further to the procedure as above briefly described, when planning a transaction in the sectors covered by Golden Power Act, including the incorporation of a new entity in those sectors, investors shall take into consideration the timeline needed for such process, including the time needed by the investor and its advisors to prepare the required documentation which, whenever official foreign documents are needed, shall also take into consideration apostille/legalization (as the case may be).

6	Does the national law on FDI-screening only apply to foreign direct investments from outside the EU (as required by the Regulation) or does it (indirectly) also apply to foreign direct investments from other EU-member states?	The Golden Power Act applies to all foreign investments, which is to say both to Extra-EU investments and to EU investments.
7	Which are the relevant institutions regarding an FDI-screening under the national law?	The relevant institutions are: (i) Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers) - Dipartimento per il Coordinamento amministrativo; (ii) Ministero delle Imprese e del Made in Italy (Ministry of Enterprises and Made in Italy).
8	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are the consequences for the (pending) transaction during the screening?	The Government reviews whether the acquisition transaction is a risk to the national security and/or essential national interests of the Italian Republic in case: (i) functioning of vital processes is disrupted, (ii) the integrity and exclusivity of knowledge and information relating to sensitive/vital processes are not safeguarded, and (iii) the transactions would result in an undesirable (strategic) dependency for Italy to another country. In its review, the Government does not only focus on the purchaser, but also for example on the ownership structure, related/affiliated parties, such as equity interests, special controlling rights and the composition of the managerial and/or supervisory board, relations with foreign governments. While the notification is being processed by the Government, and appending its final decision, the transaction cannot move forward and all voting rights are suspended. This is referred to as the 'standstill period'.
9	What are the possible outcomes of an FDI-screening by the designated (national) authority?	After performing an FDI-screening, the Presidency of the Council of Ministers can decide: • that there is no risk for the national security, meaning that no further review is required, or • there is a risk for national security, meaning an investment test and review is necessary.

		The Italian Government can implement a series of special powers in order to protect national interests and state security in strategic sectors of the economy. Some of the powers that can be exercised include: (i) veto power: the Italian Government can block or override strategic decisions of foreign companies or enterprises operating in the sectors covered by the Golden Power, such as mergers and acquisitions, if these decisions are considered a threat to national security; (ii) power of approval: the Italian government has the power to authorise or reject certain transactions or activities of enterprises and/or companies covered by the Golden Power, such as the appointment of new directors or the sale of certain assets; (iii) monitoring power: the Italian Government can exercise special control over the companies covered by the Golden Power, through the appointment of a special commissioner, to ensure national security and prevent possible threats; (iv) power of revocation: the Italian Government has the power to revoke licences, authorisations or concessions from companies operating in the sectors covered by the Golden Power, if they violate national security rules; (v) power to intervene: the Italian government can intervene directly in emergency or crisis situations affecting companies or enterprises covered by the Golden Power, to protect national interests and the security of the State.
10	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	In case the target and/or the purchaser is in breach of any of its obligations under the Golden Power Act, such as not notifying the Government, they are subject to administrative pecuniary sanctions. In particular, the failure to comply with notification obligations may result in the application of a penalty equal to an amount double the value of the planned transaction and, in any case, no less than one per cent of the turnover of the target of the last financial year for which the financial statements were approved, in addition to accessory penalties (e.g., restoration

		of the status quo ante, etc.); moreover, resolutions or acts that are adopted in violation of the procedure laid down in the Golden Power Act are null and void. Furthermore, it is possible that the failure to notify the investment may also have legal consequences, e.g. in relation to competition, consumer or environmental protection rules. In such a case, the investor could also be legally sanctioned as a result of any further proceedings initiated by the competent authorities.
11	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	The exercise of the Golden Powers does not apply to transactions carried out within a group of companies such as (i) mergers, (ii) demergers, (iii) contributions or transfers of assets or shares, if this does not trigger (a) the transfer of the business or of registered office of the company to a country outside the European Union, (b) a change of the corporate purpose, (c) the dissolution of the company, (d) the amendment of the company's articles of association adopted pursuant to Article 2351, third paragraph, of the Civil Code, or introduced pursuant to Article 3, paragraph 1, of Decree-Law No. 332 of 31 May 1994, converted, with amendments, by Law No. 474 of 30 July 1994, (e) the creation or assignment of rights in rem or rights of use relating to tangible or intangible assets or pledges burdening the use thereof, also as a result of insolvency proceedings.

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4.7. The Netherlands

This factsheet should be consulted in conjunction with Chapter 4 (*European Union*) and terms defined in Chapter 4 have the same meaning when used in this factsheet.

This factsheet is relevant for investments and acquisitions in the Netherlands amongst others in the following markets:

- **Energy**
- **Finance**
- **Business campuses**
- **Infrastructure**
- **Weapon industry / Defence**
- **Technology**

	Topic	Comment
1	A. Has the Regulation been implemented in national law?	A. The Regulation has been implemented into Dutch national law by adoption of the Implementation act on foreign direct investments ('*Uitvoeringswet screeningsverordening buitenlandse directe investeringen*', "**Implementation Act**").
	B. When did/do(es) the national law(s)/act(s) come into force?	B. On 3 December 2020 the Implementation Act came into force.
	C. Does the national law have retrospective effect?	C. No, the Implementation Act does not have retrospective effect.
2	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	On 1 June 2023, additional legislation the Investment Screening Act ('*Wet Veiligheidstoest investeringen, fusies en overnames*', "**Vifo Act**") came into force. The Vifo Act provides a legal basis for the Dutch government to scrutinise and, if necessary, block foreign direct investments. **The Vifo Act retroactively applies to acquisition activities made on/after 8 September 2020**.
3	Which sectors and/or companies are covered by the Regulation and national legislation on FDI?	The Vifo Act applies to the following sectors and/or companies: (i) Vital providers in the following industries: 1. Heat transportation 2. Nuclear energy 3. Port area 4. Banking 5. Finance market infrastructure 6. Extractable energy 7. Gas storage

		8. Other categories of vital providers that will be designated as such by governmental decree (ii) Operators of business campuses (iii) Enterprises active in the field of sensitive technologies: 1. Products for dual use – products suitable for both military and civilian use – for which export is licensed 2. Designated military goods 3. Other categories of sensitive technologies appointed by governmental decree (iv) Enterprises active in the field of highly sensitive technologies; on the basis of The Sensitive Technology Decree. If an undertaking is active in these highly sensitive technologies, a lower threshold than control will trigger notification
4	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	The Vifo Act establishes a mandatory, suspensory investment screening regime. The **target undertaking and the acquirer** are obligated to notify the Investment Screening Agency *('Bureau Toetsing Investeringen*', "**BTI**"). They are only obligated to notify if the acquisition activity concerns vital providers, business campus operators and/or companies active in the field of (high) sensitive technologies. Acquisition activities include: (i) Acquisitions (ii) Mergers (iii) Joint ventures which are fully functional (iv) Demergers (v) Acquiring (partially) assets of a target undertaking (vi) Other legal acts that have the effect that one or more persons acquire control in a target undertaking (vii) Acquiring (partially) assets of a target undertaking by universal title, other than by merger or demerger (catch all rule/residual category) The main timeline: The target undertaking and the acquirer are obliged to notify the BTI <u>before</u> the acquiring activity is concluded/became effective. In case of an acquisition activity under universal title (which is effective immediately), the

		acquirer is obligated to send a notification within two (2) weeks of the acquiring activity. The BTI reviews the notification within eight (8) weeks after receipt. This period can be extended with six (6) months. If the BTI requests for additional information, the review is suspended until the requested information is received.
5	What are the main other features in relation to FDI that investors should be concerned with?	The Vifo Act covers acquiring activities that result in acquisitions of control in a target undertaking "*established in the Netherlands*" and involved in the areas mentioned under point 4. To determine whether an undertaking is "*established in the Netherlands*", the location of the activities and actual management is decisive, and not/to lesser extent the legal form of the company or if it is incorporated in the Netherlands. To notify the BTI, parties must use a designated form.
6	Does the national law on FDI-screening only apply to foreign direct investments from outside the EU (as required by the Regulation) or does it (indirectly) also apply to foreign direct investments from other EU-member states?	The Vifo Act does not only apply to '*non-EU acquisition activities*', but also to investments from acquirers/investors from (other) EU-member states.
7	Which are the relevant institutions regarding an FDI-screening under the national law?	The relevant institutions are the Minister of Economic Affairs and Climate and the BTI. The BTI is the Dutch screening authority and acts on behalf of the Minister of Economic Affairs and Climate.
8	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are the consequences for the (pending) transaction during the screening?	The BTI reviews whether the acquisition activity is a risk for the national security of the Netherlands, because: (i) functioning of vital processes are disrupted (ii) the integrity and exclusivity of knowledge and information relating to sensitive/vital processes are not safeguarded (iii) an undesirable (strategic) dependency for the Netherlands of an other country is created The BTI does not only focus on the acquirer, but also (not limitative list) the ownership structure (is this transparent) and other relations of parties related to the acquirer, such as equity interests, special controlling rights and the composition of the managerial and/or supervisory board.

		While the notification is being processed by the BTI, and it has not yet made a decision, the acquiring activity can not be executed. This is referred to as the '*standstill period*'.
9	What are the possible outcomes of an FDI-screening by the designated (national) authority?	After performing an FDI-screening, the BTI can decide (i) that there is no risk for the national security, and no further review is required, or (ii) a risk for national security exists and a review is necessary. In case a review is necessary, the BTI can decide to take '*mitigating measures*' or – as a measure of last resort – prohibit the acquisition activity.
10	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	In case the target and/or the acquirer is in breach with any of its obligations, such as not notifying the BTI or not providing correct information, a fine can be incurred., which can amount (maximum) up to 10% of the annual turnover of the company concerned.
11	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	As far as we are aware, there are no exceptions applicable under Dutch law to the obligations arising from the Regulation. However, the Vifo Act contains provisions which state that obligations arising from the Vifo Act do not apply if: (i) the State of the Netherlands (including provinces and municipalities) (in)directly acts as acquirer (ii) If other Dutch law imposes a specific test based on national security on the acquisition activity, regardless of the content of that specific test, this is also the case if that test does not apply to a target undertaking because the acquisition activity does not meet a minimum size requirement set forth in the other law or is of a different nature than prescribed for testing in the other law (iii) The acquirer is a legal entity independent of a listed target undertaking, if the purpose of this acquirer is to safeguard the interests of this target undertaking and an affiliated enterprise that acquires control or significant influence for a maximum duration of two years after the announcement of a public offer to protect this target undertaking (iv) The acquirer is a legal entity whose statutory purpose is to safeguard the

		interests of the financial system related to the orderly and controlled winding-up of an entity referred to in article 7, paragraphs five to eight, as determined by De Nederlandsche Bank or, depending on the jurisdictional allocation pursuant to Article 7 of External link: Regulation 806/2014, the resolution board referred to in article 42 of that regulation has established that the conditions for the winding-up of that target company have been met After notifying the Minister/BTI of the acquisition activity, the target undertaking and acquirer can request the Minister/BTI to grant them an exemption from the prohibition for the acquiring activity. This exemption is only possible if the public interest is at stake. The Minister/BTI can grant an exemption with restrictions and/or conditions can be attached to an exemption.

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4.8. Spain

This factsheet should be consulted in conjunction with Chapter 4 (*European Union*) and terms defined in Chapter 4 have the same meaning when used in this factsheet.

This factsheet is relevant for investments and acquisitions in Spain amongst others in the following markets:

- **Energy**
- **Transport**
- **Water**
- **Aerospace**
- **Weapon industry / Defence**
- **Finance**
- **Supply of key inputs**
- **Technology and data (also communications and the infrastructure)**
- **Media**

	Topic	**Comment**
1	A. Has the Regulation been implemented in national law?	A. The regulation has been implemented in Spain through the approval of the *Royal Decree 571/2023 of 4 July on foreign investment* ("**RD 571/2023**").
	B. When did/do(es) the national law(s)/act(s) come into force?	B. The RD 571/2023 will come into force on 1 September 2023. Until the approval of the rules for the development of RD 571/2023, the procedures applicable to the processing of declarations and the registration of investment transactions contained in the Order of May 28, 2001 will continue to be in force.
	C. Does the national law have retrospective effect?	C. No, the RD 571/2023 does not have retrospective effect. As a transitional regime, procedures initiated prior to that date will be subject to the regime set out in *Royal Decree 664/1999 of 23 April 1999 on foreign investment.*
2	Which sectors and/or companies are covered by the Regulation and national legislation on FDI?	Regarding the object of the Spanish Company, the following sectors are subject to the mechanism of control established in art. 7 bis: 1) **Critical infrastructures** (i.e. energy, transport, water, sanity, communication, media, treatment and storage of data, aerospace, defence, electoral or finance…)

		2) **Critical technologies and dual-use** (i.e. telecommunication, AI, robotics, semiconductors, cybersecurity, aerospace, defence, storage of energy, quantic and nuclear, nanotechnologies and biotechnologies). 3) **Technologies for leadership and industrial training** (i.e. advanced materials and nanotechnology, microelectronics, AI, digital security, connectivity…). 4) **Technologies developed by using programs and projects of special interest for Spain** (i.e. the ones that involve large quantities of financing from UE or Spain). 5) **Supply of key inputs** (i.e. inputs provided by Companies which develop and modify *software* to operate in the critical infrastructures of point 1)). 6) **Sectors with access to sensitive data** (i.e. access to personal data or capacity of control of that information which include access to data base related to the critical infrastructures of point 1) or not public access). 7) **Media.** 8) **Other sectors** designated by the Government which can affect public safety, public order or public health.
3	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	According to art. 2 of the RD 571/2023, this national regulation coexists with any particular regime applicable to each sector. In that case, FDI must comply with the requirements of the sectorial regulation.
4	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	An FDI-screening in Spain involves the analysis of compliance with the requirements for obtaining the authorization to invest in a Spanish Company. The screening is not necessary in case of an exempted transaction. From the entry into force of the RD 571/2023, the general **deadline** for resolving requests for authorization in all control mechanisms is reduced from 6 to **3 months**. In case of not receiving any resolution within that period, the authorization will be negative. The **timeline** is **suspended** in case of receiving any **information requirement** from the authorities.

5	What are the main other features in relation to FDI that investors should be concerned with?	<u>Mechanism of control</u> Regarding the <u>subject</u> of the investment, **the non-European investors subject to the mechanism of control** of art. 7 bis are the following: 1) Foreign investors **controlled directly or indirectly by the Government of a third State**, including public organisms or army forces. 2) Foreign investors **who have invested in any sector affecting public safety, public order and public health in another Member State**, and especially in sectors subject to the mechanism of control of art. 7 bis. <u>Voluntary consultation proceeding</u> Investors could voluntarily ask the authorities for a **confidential and binding resolution** regarding the necessity or not of requesting an authorization for that particular investment. The authorities must issue a **resolution** within **30 business days**. <u>Notary's duty</u> The **notary** who notices the **requirement of prior authorization** to validly perform the transaction **must inform the parties** involved about it.
6	Does the national law on FDI-screening only apply to foreign direct investments from outside the EU (as required by the Regulation) or does it (indirectly) also apply to foreign direct investments from other EU-member states?	According to art. 3 of the RD 571/2023, this regulation applies to **non-residents in Spain**. • It includes investors from countries **outside the EU** as well as from **other EU member states (the latter until December 31, 2024)**. However, any of the following are considered a **foreign direct investments:** (i) Investments in which the foreign investor will **acquire a participation of 10% or more in the share capital** of the Spanish Company. (ii) Investments in which the foreign investor **acquires the control** of the Spanish Company according to the requirements established in art. 7.2 of the Spanish Competition Law. (iii) Investments **made by investors of other EU member states until December 31,**

		2024 in a listed company in Spain or an **unlisted company if its value exceeds 500M €.**
7	Which are the relevant institutions regarding an FDI-screening under the national law?	The **decision** on the application for **authorisation** is generally taken by the **Council of Ministers.** Nonetheless, **for investments of 5M € or less**, the **head of the Directorate-General for International Trade and Investment** is the relevant entity for issuing the authorisation.
8	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are the consequences for the (pending) transaction during the screening?	The **Foreign Investment Board** is in charge of communicating the criteria and methodology followed to analyse and instruct the transactions submitted. During the screening, the **transaction is void and null** until the authorisation is obtained. • **Foreign investor will not be able to exercise any political or economic rights** in the Spanish Company until the authorisation is obtained. • **Possible economic penalties** for the maximum amount of the transaction value.
9	What are the possible outcomes of an FDI-screening by the designated (national) authority?	There are 3 possible outcomes: 1) **Positive**: the authorization is obtained and the FDI is allowed. 2) **Negative**: the authorization is rejected and the FDI is no allowed. 3) **Silence**: it is considered as a negative outcome if the authority does not issue the resolution within 3 months. Nevertheless, the authority maintain the duty of issuing the resolution after the deadline. The silence allows the applicant to bring the matter before the administrative courts.
10	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	According to art. 25 of the RD 571/2023, if one party does not comply with its obligations it could be considered an **infraction** and **economic penalties** could be imposed.
11	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	There are no exceptions applicable under Spanish law to the obligations arising from the Regulation.

		However, the RD 571/2023 contains a list of transactions exempt from the mechanism of control, for instance: i. Foreign investments in **strategic sectors** where the **turnover of the acquired companies does not exceed 5M€** in the last accounting year. ii. **Time-limited investment** which **do not create any real capacity to influence the company.** iii. **Certain operations** in the **energy sector** that by virtue of their characteristics are **not considered to pose a risk to national security.**

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5. United Arab Emirates

	Topic	Comment
1	A. Has the Regulation been implemented in national law?	A. The implementation of Federal Decree-Law No. 2/2015 into national UAE law was initially effected on 25 March 2015 and was repealed by Federal Decree-Law No. 32/2021 on 20 September 2021.
	B. When did/do(es) the national law(s)/act(s) come into force?	B. The Federal Decree-Law No. 32/2021 on 20 September 2021 came into effect on the 2nd of January 2022.
	C. Does the national law have retrospective effect?	C. Yes.
2	Which sectors and/or companies are covered by the Regulation and national legislation on FDI?	Each Emirate has issued a list of positive activities whereby 100% foreign ownership of companies are permitted. **The Abu Dhabi and Dubai Departments of Economy have released lists of more than 1,100 and 1,000 activities, respectively, with a strong focus on commercial and industrial sectors. The UAE allows 100% foreign ownership except for** strategic impact activities. The UAE Cabinet issued Resolution No. 55 of 2021 on strategic impact activities (the Strategic Impact Resolution). The resolution defines strategic impact activities and sets out the foreign ownership requirements for companies that carry out these activities. The Strategic Impact Resolution identifies the following activities as having a strategic impact: • Security, defense, and military activities; • Banks, exchange houses, finance companies, and insurance; • Currency printing; • Telecommunications; • Hajj and Umrah services; • Quran centers; and • Services related to fish traps The resolution also sets out the process for foreign investors who wish to carry out any of the above strategic impact activities, except for

		services related to fish traps, which are still subject to 100% national ownership.
3	Did the member state implement any additional law(s)/act(s) about FDI and does the national law deviate from the Regulation?	No.
4	Please summarize what an FDI-screening in your country entails and which timelines are maintained.	The UAE introduced an FDI screening mechanism to assess and regulate foreign investments, particularly in strategic sectors. The screening is primarily aimed at safeguarding national interests and security. **Timelines:** The exact timelines for the FDI screening process may vary based on the specific case and sector. However, there are typically certain timeframes and steps involved: • **Pre-Approval Stage:** Foreign investors are required to submit their investment proposals and related documents to the relevant UAE authorities for review. The review process begins at this stage, and the timeline may vary depending on the complexity of the investment. • **Decision Period:** The UAE authorities responsible for FDI screening will evaluate the proposed investment to ensure it aligns with national interests and security concerns. The decision period can vary but is typically completed within a specified timeframe set by the authorities. • **Approval or Rejection:** After the evaluation, the authorities will either approve the foreign investment proposal, often with specific conditions if required, or reject it if it is found to be against national interests or security concerns. **Strategic Sectors:** The FDI screening process is particularly stringent for investments in strategic sectors, which are considered crucial to national security. Investments in such sectors may undergo more comprehensive scrutiny, potentially leading to longer timelines for approval. **The timeline for the FDI screening process in the UAE varies depending on the complexity of the proposal and the level of scrutiny required. However, the authorities typically**

		aim to make a decision within 45 days of receiving the notification.
5	What are the main other features in relation to FDI that investors should be concerned with?	When considering Foreign Direct Investment (FDI) in the United Arab Emirates (UAE), investors should be aware of several key features and considerations beyond the FDI screening process. Here are some important aspects that investors should keep in mind: 1. **Legal Structure and Business Setup:** Investors should understand the different legal structures available for setting up a business in the UAE, such as Limited Liability Companies (LLCs), Free Zone Companies, and Branch Offices. They need to choose the appropriate legal structure that aligns with their business objectives, industry, including the FDI regulations. 2. **Ownership Restrictions:** Investors need to be aware of the ownership restrictions in various sectors, as certain industries may have limitations on foreign ownership. They need to consider the sector classification to determine the extent of foreign ownership allowed. 3. **Free Zones:** Free zones are designated as special economic zones that provide foreign investors with a range of advantages pertaining to ownership and tax-related benefits. However, free zones are also subject to their own set of rules and regulations, which can be complex. Investors need to carefully consider the pros and cons of investing in a free zone and choose a suitable free zone that aligns with the their business activities and objectives. 4. **Taxation and Incentives:** Investors need to understand the tax regime in the UAE and explore other incentives such as customs duty exemptions, VAT regulations, and double taxation treaties. 5. **Local Partnerships:** In sectors where full foreign ownership is not allowed, investors need to consider forming partnerships with UAE nationals or local companies. Joint ventures are a popular way

		for foreign investors to enter the UAE market. Joint ventures can provide investors with access to local expertise and networks, and they can also help to reduce the risk of investment. However, it is important to carefully structure a joint venture agreement to protect the interests of all parties involved. 6. **Regulatory Environment:** Investors need to stay informed about the evolving regulatory environment and any changes in laws and regulations. They need to ensure compliance with licensing, permits, and regulatory requirements at both federal and emirate levels. 7. **Labor Laws and Employment Regulations:** Investors should familiarize themselves with the UAE labor laws, including requirements related to hiring, employment contracts, and employee visas. Understanding the UAE's policies on hiring foreign workers is essential. 8. **Intellectual Property Protection:** Investors need to protect their intellectual property by registering trademarks, patents, and copyrights as needed. They need to be aware of the UAE's intellectual property laws and regulations. 9. **Repatriation of Profits:** Investors need to consider how they can repatriate profits and capital from the UAE, as there are specific regulations governing this aspect. 10. **Competition law:** The UAE has a competition law that prohibits anti-competitive practices. Investors should be aware of the competition law and should take steps to ensure that their business practices are compliant. 11. **Due Diligence and Legal Advice:** Investors need to conduct thorough due diligence on the market, potential partners, and all the necessary regulatory requirements. 12. **Dispute resolution:**

		In the UAE, there are multiple avenues for resolving disputes, including litigation in the UAE courts and Alternative Dispute Resolution (ADR) methods such as arbitration and mediation. Investors should carefully consider their options and choose a dispute resolution mechanism that aligns with the nature of their business, as well as the desired level of efficiency and fairness in reaching a resolution.
	Does the national law on FDI-screening apply to foreign direct investments from outside the UAE?	The FDI Regulation applies to all foreign direct investments, regardless of the country of origin of the foreign investor.
6	Which are the relevant institutions regarding an FDI-screening under the national law?	The UAE had established the following key institutions and entities relevant to Foreign Direct Investment (FDI) screening: 1. **UAE Ministry of Economy (MOE):** The Ministry of Economy plays a central role in formulating and implementing FDI policies and regulations at the federal level. It works to promote FDI, review investment proposals, and assess their impact on national security and strategic interests. 2. **UAE Cabinet:** The UAE Cabinet, chaired by the Prime Minister, may have oversight and decision-making authority over significant FDI cases, especially those related to strategic sectors or investments of national importance. 3. **UAE Securities and Commodities Authority (SCA):** The SCA oversees financial markets and securities-related activities in the UAE. In some cases, investments in listed companies or securities may require approval from the SCA. 4. **Sector-Specific Regulatory Authorities:** Depending on the industry or sector of the proposed investment, relevant regulatory authorities and ministries may be involved in the screening process. For example, the Telecommunications Regulatory Authority (TRA) oversees the telecommunications sector, while the UAE Central Bank regulates banking and financial services. 5. **Emirate-Level Departments:** Each emirate in the UAE has its own Department of Economic Development (DED) or similar agency responsible for implementing FDI regulations and conducting screenings at the emirate level. These agencies work closely

		with the federal government and play a vital role in the approval process. 6. **Free Zone Authorities:** Free zones in the UAE often have their own regulatory bodies responsible for approving and overseeing investments within their respective zones. These authorities may have specific requirements and procedures for FDI approval. The specific institutions involved in the FDI screening process will vary depending on the nature of the investment proposal
7	If a transaction is subject to a screening, which criteria does the designated (national) authority check and what are the consequences for the (pending) transaction during the screening?	The designated authority will check the following criteria when screening an FDI transaction: • **The identity and background of the foreign investor:** The authority will conduct a background check on the foreign investor to assess their financial stability, reputation, and any potential risks to national security or the economy. • **The nature of the investment:** The authority will review the proposed investment to determine if it is in a strategic impact sector or if it raises any other concerns, such as competition law violations or intellectual property infringement. • **The impact of the investment on the UAE economy:** The authority will assess the potential impact of the investment on the UAE economy, including job creation, economic growth, and technology transfer. The consequences for the (pending) transaction during the screening process are as follows: • The transaction will be put on hold until the screening process is complete. • The foreign investor may be required to provide additional information or documentation to the authority. • The authority may impose conditions on the transaction, such as requiring the foreign investor to divest of certain assets or to appoint local directors to the board of directors. • The authority may reject the transaction altogether. The screening process typically takes 45 days to complete, but it can be extended if the authority needs more time to review the investment proposal or to conduct additional due diligence.

8	What are the possible outcomes of an FDI-screening by the designated (national) authority?	The possible outcomes of an FDI-screening by the designated UAE authority are as follows: • Approval: The authority may approve the investment proposal without any conditions. • Approval with conditions: The authority may approve the investment proposal subject to certain conditions, such as requiring the foreign investor to divest of certain assets, to appoint local directors to the board of directors, or to invest in certain sectors. • Rejection: The authority may reject the investment proposal altogether. The authority's decision will be based on the criteria discussed above, such as the identity and background of the foreign investor, the nature of the investment, and the impact of the investment on the UAE economy. In addition to the above, the authority may also decide to: • Extend the screening period: The authority may extend the screening period if it needs more time to review the investment proposal or to conduct additional due diligence. • Request additional information or documentation: The authority may request additional information or documentation from the foreign investor to support their investment proposal.
9	What happens to a transaction if a party does not comply with the Regulation and/or national law (such as not notifying the designated national authority and/or not providing/incorrect information)?	If a party does not comply with the Regulation and/or national law on FDI in the UAE, the consequences for the transaction can be severe. The designated national authority has the power to: • Suspend or revoke the FDI license: The authority can suspend or revoke the FDI license of a company that has failed to comply with the Regulation and/or national law. This would prevent the company from operating in the UAE or from undertaking any further FDI transactions. • Impose fines: The authority can impose fines on companies and individuals that have failed to comply with the Regulation and/or national law. The fines can be significant, and they can be imposed on both the company and the individuals involved in the transaction. • Initiate criminal proceedings: In some cases, the authority may initiate criminal proceedings against individuals or companies that have failed to comply with the Regulation and/or national law. This could

		lead to imprisonment and/or other criminal penalties. In addition to the above, the party that has failed to comply with the Regulation and/or national law may also be liable to the other party to the transaction for any losses that they have suffered as a result. It is important to note that the specific consequences of non-compliance will vary depending on the nature of the violation and the severity of the offense. However, it is clear that non-compliance with the Regulation and/or national law on FDI in the UAE can have serious consequences for both the parties involved in the transaction and for the transaction itself.
10	Are there any exceptions applicable under national law to the obligations arising from the Regulation?	Yes, there are some exceptions applicable under UAE law to the obligations arising from the Regulation on FDI in the UAE. The following are some examples: • Free zones: Free zones are designated areas within the UAE where foreign investors can establish businesses and operate under a more liberal regulatory regime. However, there are some restrictions on the types of activities that can be conducted in free zones. • Strategic partnerships: The UAE government may enter into strategic partnerships with foreign investors for certain projects. These partnerships are typically subject to a separate approval process, and they may be exempt from certain requirements of the FDI Regulation. • Investments in certain sectors: The UAE government may also issue special decrees or resolutions that provide exemptions from the FDI Regulation for investments in certain sectors. In addition to the above, there are a number of other factors that can affect the applicability of the FDI Regulation to a particular transaction. It is important to note that the exceptions to the FDI Regulation are complex and subject to change. It's worth noting that exemptions and incentives can vary from sector to sector and may evolve over time based on the government's priorities and economic development objectives. Additionally, while exemptions from the FDI screening process can simplify the initial investment approval, other regulatory requirements related to licensing, permits, and

		compliance with sector-specific regulations may still apply.

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6. United Kingdom

General Introduction

The **National Security and Investment Act 2021** ("**NSIA**") is a law that allows the UK Government to review and intervene in acquisitions and investments that could pose a risk to national security. The act requires mandatory notification and clearance for transactions involving control of entities or assets in certain sectors of the UK economy. It also gives the Government the power to call in transactions within six months of becoming aware of them, or up to five years after completion (if they might affect national security, even if not in the specified sectors). The Government can impose remedies such as conditions, limitations, or prohibitions on transactions that are found to be harmful to national security.

The NSIA applies to any transaction completed on or after 12 November 2020. The Government can impose a range of remedies if it becomes aware of a deal that could cause a national security risk in the UK. Parties will be able to notify the Government voluntarily, in order to seek pre-deal confirmation that the Government will not call in the deal.

The NSIA also establishes a mandatory notification regime: anyone acquiring control of entities operating in 17 specified sectors in the UK must notify the Government, regardless of deal value. If the acquiror fails to do so, it is prohibited to close the transaction and any attempt to do so is void, and the Government can impose significant sanctions.

The NSIA is neutral as to the nationality of the acquiror, and also to the nationality/location of the target entity or assets. The acquisition of an overseas entity could engage the NSIA if the target operates in the UK and the transaction could give rise to a national security risk.

When planning a transaction, the seller or the target should assess whether the NSIA could apply. They should consider questions such as:

- Does the target supply any customers who are relevant to the UK's national security, even indirectly?
- Do the target's operations give it access to any sensitive information?
- Does the target operate at sites which may raise national security sensitivities, or at sites which are near to Government locations?

Sectors

Does the target operate in any of the 17 mandatory notification sectors? These are as follows:

1. Advanced materials
2. Advanced robotics
3. Artificial intelligence e
4. Civil nuclear
5. Communications
6. Computing hardware

7. Critical suppliers to the government
8. Cryptographic authentication
9. Data infrastructure
10. Defence
11. Energy
12. Military and dual use
13. Quantum technologies
14. Satellite and space technology
15. Suppliers to emergency services
16. Synthetic biology (formerly known as Engineering biology and renamed following the consultation)
17. Transport

Procedure

If the NSIA could apply, there are a number of steps that should be taken at the outset. First, the NSIA should be factored into timetabling discussions with all key stakeholders, including lenders, customers, suppliers, and employees. The seller will not want to create over-optimistic expectations. If the parties notify, the Government has 30 working days to call-in the deal (counting from the date that the Government accepts that notification is complete). There is then a 30-working day decision period, which the Government can extend by 45 working days. The Government can also "stop the clock", with further information requests. So, the NSIA could potentially add several months to a deal timetable.

Secondly, parties should consider seeking informal guidance from the Government. The NSIA is neutral as to the nationality of the acquiror and also to the nationality/location of the target entity or assets. The acquisition of an overseas entity could engage the NSIA if the target operates in the UK and if the transaction could give rise to a national security risk.

Sanctions

The NSIA says you can get in serious trouble if you break its rules or ignore what it tells you to do. Some of the things that can happen are: You can go to jail for up to five years if you buy something without asking first, don't do what the act says, or lie about something. You or your business can pay a lot of money (up to £10 million or 5% of global turnover) if you do those things. You can lose your job as a director for up to 15 years if you responsible for the breach of the NSIA or don't stop them from happening. These things are meant to stop and punish anyone who does something that could hurt the UK or make the NSIA less effective. The Government has some advice on how to follow the rules and what happens if you don't.[5]

The EU Regulation and the UK

[5] Please see: https://www.gov.uk/government/publications/national-security-and-investment-act-2021-guidance-on-compliance-and-enforcement/national-security-and-investment-act-2021-guidance-on-compliance-and-enforcement

The EU has a rule (Regulation 2019/452 or the "EU FDI Regulation") that helps the EU and its countries work together and share information about foreign money that might cause problems for the EU or its countries. It does not change or conform the different rules that each country has, but rather adds to them and sets some basic standards. Some of the main ways that the EU rule and the UK Act are different are: The EU rule does not make you tell them about your money at the EU level, but the UK Act makes you tell them and get permission for some things in some areas.

The EU rule does not let the EU stop or change your money, but the NSIA lets the Secretary of State do that. The EU rule looks at foreign money that might cause problems for the EU or its countries, but the NSIA looks at money that could be risky for national security only. The EU rule applies to foreign money from any other country, but the NSIA applies to money from anyone who is not a UK person or a qualifying entity.

The EU rule and the NSIA have some things in common, such as: They both allow you to pre-notify, if you think the proposed purchase or investment might cause problems. They both make sure that the EU and its countries, or the Secretary of State and other senior people (politicians and officials), talk to each other and share information.

They both consider different things when they check how your money might affect things, such as who you are and who you buy from or sell to, and how your money might affect important things like infrastructure, technology, supplies, information and so on.

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7. India

General Introduction

Despite geopolitical challenges and a global slowdown, the World Bank raised its GDP forecast for India from 6.5 percent to 6.9 percent for 2022-23. With the potential to attract USD 475 billion in FDI over the next five years, India has promising growth prospects for foreign investments. The Indian presidency of the G20 in 2023 provides and opportunity to strengthen the Indian economy, attract investment in a variety of sectors, expand the global value chain, and accelerate exports to key sectors.

States	28 states and 8 union territories
Total area	3.29 million sq km (90% land, 10% water)
Railway	68,043 km
Roadways	6.2 million km
Waterways	14,500 km
Airport	137
Labor	523 million
GDP	USD 3.737 trillion

Reforms such as the creation of Coastal Economic Zones, the Production Linked Investment Scheme to incentivize domestic manufacturing, incentives for R&D and innovation, a national infrastructure pipeline, 13 free trade agreements with countries such as Japan, Australia, the United Arab Emirates, and Malaysia, among others, have made India one of the most important destinations for multinational corporations seeking to expand globally.

Sectors – Foreign Direct Investments Rules

The FDI Policy outlines, among other things, the entry procedures for various sectors (such as automatic entry or government approval), investment caps for various sectors, investment requirements, and acceptable instruments. The sectors are divided into three for the purposes of FDI inflow:

1. *Prohibited Sectors* – prohibited from receiving FDI. The following list of sectors is under the prohibited category:
    - Lottery Business including Government/ Private lottery, online lotteries etc.[6]
    - Chit Funds
    - Trading in Transferable Development Rights (TDR)
    - Manufacturing of Cigars, cheroots, cigarillos, and cigarettes (tobacco or tobacco substitutes)
    - Gambling and betting including casinos
    - Nidhi Company
    - Real estate business[7] or Construction of Farmhouses

[6] Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, and management contract is also prohibited for Lottery Business and Gambling and Betting activities

[7] Real estate business shall not include the development of town shops, construction of residential/ commercial premises, roads or bridges and Real [state Investment Trusts (R[ITs) registered and regulated under the S[BI (R[ITs) Regulations, 2014.

- Sectors do not open to private sector investments – atomic energy, railway operations (other than permitted activities mentioned under the consolidated FDI Policy)

2. *Automatic Route* – no prior approval is required from the government for receiving FDI. The following list of sectors is under the automatic route category:

S. No	Sector	FDI Rules
1	Agriculture & Animal Husbandry	100% FDI permitted
2	Air-Transport Services	100% FDI permitted
3	Asset Reconstruction Companies	100% FDI permitted
4	Auto-components	100% FDI permitted
5	Automobiles	100% FDI permitted
6	Biotechnology (Greenfield)	100% FDI permitted
7	Broadcast Content Services	100% FDI permitted
8	Cash & Carry Wholesale Trading	100% FDI permitted
9	Chemicals	100% FDI permitted
10	Coal & Lignite	100% FDI permitted
11	Construction Development	100% FDI permitted
12	Construction of Hospitals	100% FDI permitted
13	Credit Information Companies	100% FDI permitted
14	Duty Free Shops	100% FDI permitted
15	E-commerce Activities	100% FDI permitted
16	Electronic Systems	100% FDI permitted
17	Food Processing	100% FDI permitted
18	Gems & Jewellery	100% FDI permitted
19	Healthcare (Greenfield)	100% FDI permitted
20	Industrial Parks	100% FDI permitted
21	IT & BPM	100% FDI permitted
22	Leather	100% FDI permitted
23	Manufacturing, Mining & Exploration	100% FDI permitted
24	Other Financial Services	100% FDI permitted
25	White Label ATM Operations	100% FDI permitted
26	Insurance & Insurance Intermediaries	100% FDI permitted
27	Petroleum & Natural gas	100% FDI permitted
28	Ports & Shipping	100% FDI permitted
29	Railway Infrastructure	100% FDI permitted
30	Renewable Energy	100% FDI permitted

31	Services under Civil Aviation	100% FDI permitted
32	Roads & Highways	100% FDI permitted
33	Single Brand Retail Trading	100% FDI permitted
34	Pharmaceuticals (Greenfield)	100% FDI permitted
35	Textiles & Garments	100% FDI permitted
36	Thermal Power	100% FDI permitted
37	Tourism & Hospitality	100% FDI permitted
38	Plantation sector	100% FDI permitted
39	Services such as Maintenance	100% FDI permitted

3. *Government Approval Route* – prior approval required from the government for receiving FDI. The following list of sectors is under the government approval route category:

S. No	Sector	FDI Rules
1	Banking	20% FDI permitted under Government route
2	Broadcasting Content Services (FM, Radio, up linking of news and current affairs TV Channels)	49% FDI permitted under Government route
3	Uploading/Streaming of 'News &Current affairs' through digital media	26% FDI permitted under Government route
4	Investment by Foreign airlines	49% FDI permitted under Government route
5	Core Investment Company	100% FDI permitted under Government route
6	Food Products Retail Trading	100% FDI permitted under Government route
7	Mining & Minerals separations of titanium bearing minerals and ores, its value addition and integrated activities	100% FDI permitted under Government route
8	Multi-Brand Retail Trading	51% FDI permitted under Government route
9	Print Media (publications/ printing of scientific and technical magazines/specialty journals/ periodicals and facsimile editions of foreign newspapers)	100% FDI permitted under Government route
10	Print Media (publishing of newspapers, periodicals, and Indian editions of foreign magazines dealing with news & current affairs)	26% FDI permitted under Government route

11	Satellite (Establishment and operations)	100% FDI permitted under Government route

The Government of India through Press Note 3 (2020 Series) dated April 17, 2020, amended its foreign direct investment policy that covers any investment being made from Bangladesh, China, Pakistan, Nepal, Myanmar, Bhutan, and Afghanistan or where the beneficial owner (which term has not been defined) of investment into India is situated in or is a citizen of any of the aforementioned countries, shall require prior approval of the Government regardless of the sector/activities in which investment is being made.

Entry Options in India

Foreign companies can set up a corporate entity such as a Limited Liability Company and a non-corporate entity such as a Liaison Office, Branch Office, or Project Office in India as below:

1. *Limited Liability Company (LLC)*
   To carry out its operations in India, a foreign company can establish a wholly-owned subsidiary or joint venture company. Despite having foreign shareholding, such a company will be treated as an Indian resident. A private limited company must have at least two members, and a public limited company must have at least seven members.

2. *Limited Liability Partnership (LLP)*
   In India, LLPs are a new type of business structure. It combines a company's independent legal status and perpetual succession with the organizational flexibility of a partnership firm. An LLP must have at least two partners and has limited liability in the business.

3. *Liaison office*
   A liaison or representative office in India can be established with the permission of the Reserve Bank of India and the Ministry of Corporate Affairs. A liaison office can represent group companies in India, promote import/export in India, encourage technical/financial collaborations on behalf of the parent company or group, and coordinate communications between parent/group companies and Indian companies.

   A liaison office cannot raise funds within India and must manage its expenses through inward remittances received from the head office via standard banking channels. It is an appropriate corporate entity to primarily oversee networking, raise awareness of a company, and map out future business opportunities in India.

4. *Branch office*
   A foreign company can conduct business in India through a branch office, which can be opened with the Reserve Bank of India's specific approval. A branch office can do things like import and export goods, provide professional or consultancy services, conduct research in an area where its parent company is active, promote technical/financial collaborations on behalf of the parent company/overseas group company, represent parent/group companies in India and act as buying/selling agent

in India, provide IT services and develop software in India, and provide technical support. A branch office's expenses are to be covered by either remittance from abroad or income generated in India.

5. *Project office*
   A foreign company engaged by an Indian company to execute a project in India may set up a project office without obtaining approval from the Reserve Bank of India subject to prescribed reporting compliances.
   A project office is prohibited from undertaking any activity other than the activity relating to and incidental to the execution of the project. The expenses are to be managed either through remittances received from abroad through normal banking channels or through income generated in India.

The decision regarding the entry option is based on commercial and taxation considerations.

Reporting Responsibility

Indian foreign exchange laws mandate reporting of FDI inflows in prescribed formats and within specified timelines, and pricing guidelines irrespective of the investment size.

A. FDI by way of primary issuance of securities is required to be reported by the Indian investee company within 30 days of the issuance of equity instruments, in Form FC-GPR. The Investee company require to do compliance such as:
   - Copy of FIRC from AD Bank
   - Copy of KYC from AD Bank
   - Valuation Report
   - Practicing Company Secretary Certificate
   - Board Resolution for allotment of shares
   - PAS-3 – Return of allotment filed with Registrar of Companies
   - Memorandum of Association in case of newly incorporated.

B. FDI by way of secondary acquisition or transfer of securities is required to be reported by the resident transferor or transferee within 60 days of the transfer of equity instruments or receipt/remittance of funds, whichever is earlier, in Form FC-TRS. The Investee company require to do compliance such as
   - Copy of FIRC from AD Bank
   - Copy of KYC from AD Bank
   - Valuation Report
   - Consent Letter of Transferee and Transferor
   - Declaration by Transferee
   - SH-4 as per the provisions of the Companies Act, 2013
   - Share Purchase Agreement
   - Letter of Undertaking
   - Pre- and post-transfer shareholding pattern

However, as an exception, if such a transfer is undertaken on the floor of an Indian stock exchange, then the reporting requirement falls on the foreign investor.

Repatriation of Profits and Capital

The Income earned in India can be repatriated outside India to its foreign investors through numerous options as below:

1. *Dividend*
   Companies in India normally pay their shareholders through dividends on their shares. The dividend is usually paid as a percentage of the face value of the shares. The company is under an obligation to withhold the tax on the payment of dividends to its shareholders.

2. *Buyback of Shares*
   One of the options that businesses typically use to return earnings to shareholders is the buyback of shares. The corporation is required to deduct the tax on the buyback of shares covered by the income tax treaty with the shareholder's country of residence. Share buybacks are allowed up to 25% of the total paid-up capital and free reserves.

3. *Redemption Shares*
   The Preference shares and debentures issued under the convertible or optional convertible to equity can be redeemed through cash. Redemption is considered a convenient exit option for investors with optional convertible securities which are classified as external commercial borrowing.

4. *Initial Public Offer (IPO)*
   An IPO is an offer to the public to invest in a company through the listing of the company's stock on a recognized stock exchange. Given greater access to capital in international and domestic public markets and the free transferability of shares, IPOs remain the preferred exit strategy for the majority of financial investors. Almost all shareholder agreements require the company and its promoters to provide investors with an exit via an IPO within a specific time frame.

5. *Management Support, Royalty or Fee for Technical Services*
   At the beginning of their operations in India, multinational corporations rely heavily on the support of their parent company. Indian companies can repatriate payments to their parent companies for services such as management support, royalty or fee for technical services that are subject to withholding tax in India or a tax treaty with the parent company's country of jurisdiction

It is essential to consider the tax and regulatory compliances for each option to repatriate the profit and capital to the shareholders.

Sector wise – FDI Investment rules

S.	Sector	Sub-category	FDI Rules
1	Aviation	Non-Scheduled Air Transport & Airports Services	100% FDI without approval
		Schedule Air Transport Services	Government approval beyond 49%
2	Financial Services	Banking	Government route beyond 20%
		Core Investment Company	100% FDI with Government approval
		Other Financial Services	100% FDI without approval
3	Automobile	Automobile & Auto- components	100% FDI without approval
4	Infrastructure	Ports & Shipping, Infrastructure, Construction	100% FDI without approval
5	Retail & Trade	E-commerce Activities, Single Brand Retail Trading & Wholesale Trading	100% FDI without approval
		Multi-Brand Retail Trading	51% FDI permitted with Government approval
6	Healthcare	Greenfield	100% FDI without approval
		Brownfield	Government approval beyond 74%
7	Broadcast & Media	Broadcast Content Services	100% FDI permitted with Government approval
		Newspaper	26% FDI permitted with Government approval
		Broadcasting Content Services	49% FDI permitted with Government approval
8	Agriculture	Agriculture & Plantation sector	100% FDI without approval
9	Textile	Textiles, Garments & Leather	100% FDI without approval
10	Energy	Thermal Poweç Petroleum & Natural gas, Renewable Energy & Coal & Lignite	100% FDI without approval

11	Satellite	Satellite	100% FDI permitted with Government approval
12	Electronic Systems	Electronic Systems	100% FDI without approval
13	Food Processing	Food Processing	100% FDI without approval
14	Information Technology	Information Technology	100% FDI without approval
15	Insurance	Insurance	100% FDI without approval
16	Chemicals	Chemicals	100% FDI without approval
17	Defence	Defence	Government approval beyond 74%

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8. Malaysia

General Introduction

Malaysia is ranked among the Top 25 trading countries in the world. It is ranked the 5th in the ASEAN region. According to the Malaysia's Statistic Department, Malaysia trade has increased by 30% to RM2.613 trillion from January 2022 and November 2022. Within this period, import has increased by 33.3% to RM1.193 trillion, and export has rose by 27.2% to RM1.43 trillion.

Within the shift in the global supply chain, Malaysia is promoted as an alternative hub for manufacturing and distribution activities. The industry focus approach emphasises investments in new development areas – electric vehicles, smart factories using 5G technology, supply chain ecosystems and green technology.

On this note, Malaysia has introduced and implemented numerous investors friendly policy in order to attract foreign direct investment (FDI) into Malaysia, including the introduction of National Policy on Industry 4.0 (or known as Indsutry4WRD) as well as the Malaysia Digital Economy Blueprint. The objective of Industry4WRD is to drive the manufacturing sectors and its related sectors to a digitization economy, while the Malaysia Digital Economy Blueprint outlines the Government's plans to accelerate Malaysia's progress as a whole to a technologically-advanced economy.

The policies on FDI in each industry is governed by the regulatory authority of that industry. The main areas of regulation are usually on:

a. the maximum percentage of shares allowed to be held by foreigners;
b. the minimum percentage of shares which must be held by *Bumiputera* (Malays and aborigines in Malaysia); and
c. the allowed mode of participation by foreigners in an industry.

This write-up will discuss a few major industries and the rules on FDI in those industries.

Manufacturing Industry

Malaysia has always welcomed investments in its manufacturing sector. Desirous of increasing local participation in this activity, the government encourages joint-ventures between Malaysian and foreign investors.

Since June 2003, foreign investors could hold 100% of the equity in all investments in new projects, as well as investments in expansion/diversification projects by existing companies, irrespective of the level of exports and without excluding any product or activity.

The equity policy also applies to:

a. companies previously exempted from obtaining a manufacturing licence but whose shareholders' funds have now reached RM2.5 million or have now engaged 75 or more full-time employees and are thus required to be licensed

b. existing licensed companies previously exempted from complying with equity conditions, but are now required to comply due to their shareholders' funds having reached RM2.5 million

Financial Industry

In general, acquisition of assets or interests of Malaysian companies and businesses, mergers or take-overs requires approval and apply to the following:-

a. the acquisition of the voting rights of a Malaysian corporation by any single foreign interest or associated group of 15% or more, or an aggregate foreign interest of 15% or more or exceeding RM5 million in value; or
b. any proposed acquisition of any assets or interests by any means which will result in ownership or control passing to foreign interest or diluting the *Bumiputera* interest; or
c. control of Malaysian corporations through any form of joint-venture agreement, management agreement, technical assistance agreement or other arrangements.

Usually, approvals will be granted but it may be denied in circumstances where the proposed investment conflicts with the interest/policies of the State or the Federal Government.

Offshore banks and offshore investment banks are allowed to set up operations in the Federal Territory of Labuan by way of a branch registered or a subsidiary incorporated in Malaysia. Approval is needed from the Labuan Financial Services Authority.

For acquisition relating to real property, please refer to Section 'Real Property Industry' below.

Real Property Industry

Subject to the right of the Federal Government in making laws to ensure uniformity of laws and policy, land matters are governed by the State.

In general, a foreign may acquire a commercial or residential property valued at not less than RM1 million. A foreigner may also acquire agricultural land in area of at least 5 acres valued at RM1 million and above.

However, for acquisition of property (not being a residential property) valued at more than RM20 million and if the direct interest or indirect interest of *Bumiputera* shareholding would be diluted, then such acquisition will require prior approval of the Economic Planning Unit (EPU). Foreign companies who wish to undertake such proposed acquisition must take note of the following equity conditions which may be imposed by EPU:-

a. the property acquired must be registered in the name of a locally incorporated company
b. the locally incorporated company must have at least 30% *Bumiputra* shareholding
c. the company must have at least RM250,000 paid up capital

Property Construction Industry

In Malaysia, it is mandatory for all contractors to local or foreign to be registered with the Construction Industry Development Board Malaysia (CIDB). The contractor is required to maintain a paid up of not less than RM750,000 at all time. A foreign contractor however can only bid for government projects of contract value exceeding RM50 million through a joint venture company incorporated in Malaysia with foreign shareholding not more than 49%.

Petroleum Industry

The petroleum industry in Malaysia is regulated by Petroliam Nasional Berhad ("**Petronas**"). To obtain a license from Petronas, a foreign company needs to: -

a. appoint a local company as agent;
b. form a local branch; or
c. form a joint venture company with a local company or individual.

The minimum *Bumiputera* requirements at the Board of Directors level, Management level, and Employment level depends on the category of products or services offered, which can be 100%, 51%, 30% or 0%.

Telecommunications Industry

The telecommunications service licenses in Malaysia are categorized into the following:

a. Network Facilities Provider Individual License [NFP(I)];
b. Network Facilities Provider Class License [NFP(C)];
c. Network Service Provider Individual License [NSP(I)]; and
d. Network Service Provider Class License [NSP(C)].

Foreign participation is allowed only through acquisition of shares of existing appropriately licensed service providers. The maximum foreign shareholding in these categories shall not be more than 30% in general.

Foreign Exchange Rules

Central Bank of Malaysia or Bank Negara Malaysia (BNM) continues to maintain a liberal foreign exchange policy (FEP).

Foreign investors are free to undertake any type of investment in ringgit asset or foreign currency (FC) asset in Malaysia (direct or portfolio investment) without any restriction. They can open a ringgit account or FCA with a licensed onshore bank. Funds are free to be remitted into and out of such accounts, subject to normal due diligence process by the licensed onshore bank.

They can also obtain foreign currency financing from licensed onshore bank. Proceeds of the borrowing can be utilized in or outside Malaysia.

Foreign investors are free to remit out the divestment proceeds, profits, dividends or any income arising from the investment in Malaysia. Repatriation of funds, however, must be made in foreign currency.

Withholding Tax

Non-resident are subject to a withholding tax on the sources of income earned and/or derived in Malaysia to the Inland Revenue Board. Below are some of the withholding tax rates for the following payment types:

- 30% on business, trade or profession, employment, dividends (single tier dividends are exempted) and rents
- 10% on royalties, technical or management service fees, rent or other payments for the use of any movable property
- 15% on interest and income earned by public entertainer

The above rates apply except where the double taxation agreement between the Malaysia and the country in which the recipient is resident, provides for a lower rate, in which case the rates prescribed by the agreement would apply.

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9. Vietnam

General introduction

Vietnam has transitioned from a command economy to one with strong market features over the last 30 years. After the "Đổi Mới" (or 'economic renovation' policy - a key aim of which was to open Vietnam to foreign investment) was introduced in 1986, the country initiated participation in a series of international organizations such as ASEAN (the Association of South East Asian Nations) and the WTO (World Trade Organisation) and signed multiple free trade agreement (s) ("**FTA**") in the hopes that foreign investors would be impressed with a new Vietnam in terms of an open business and investment environment.

In recent years, Vietnam's has focused on the private market to attract foreign investors. Despite the outbreak of Covid-19, Vietnam's attractive investment environment, which includes low costs, a strong labor market, and FTAs, has made it a popular destination for foreign investors.

According to the Ministry of Planning and Investment (MPI)[8], as of 20 December 2022, Vietnam attracted total newly registered capital, adjusted and contributed capital to buy shares and buy contributed capital of foreign investors about USD27.72 billion, equivalent to 89% over the same period in 2021. The capital generated by FDI projects was estimated at USD22.4 billion, an increase of 13.5% over the same period of 2021. The whole country has 36,278 valid projects with a total registered capital of approximately USD438.7 billion. The accumulated realised capital of foreign investment projects topped USD274 billion, equalling 62.5% of the total valid registered investment capital. Please see country snapshot in the table below:

Location	South East Asia The country borders China, Laos and Cambodia
Land area	331,236 sq. km
Industrial zones and economic zones	17 economic zones with total land and water survace area of 850,000 hectares; 355 industrial zones with total land area of 97,840 hectares
Airport	22
Seaport	34
Railway	2,440 km
Roadway	270,488 km
Highway	1,790 km
Population	99.5 million
Labor	51.7 million
Language	Vietnamese (official language) English (wide taught at shool)
Currency	Vietnamese Dong

[8] Report on foreign direct investment in 2022 of MPI.

Regulatory Framework and Legislation

Investment activities of foreign investors in Vietnam are primarily governed by investment related international treaties / agreements (to which Vietnam is a member) and local laws.

WTO Commitments

Vietnam joined the WTO in 2007, one of the main consequences of which is the opening of many sectors to foreign investment under specific commitments on the WTO accession of Vietnam (the "WTO Commitments"). On the other hand, the WTO Commitments also allow Vietnam to restrict market access in respect of several industries and businesses.

Other International Treaties / Agreements

Numerous trade commitments have been made by Vietnam besides the WTO Commitments. Most importantly those include:

a. international treaties with countries being members of the ASEAN (in an effort to establish a single market in the region) including, amongst others, the ASEAN Comprehensive Investment Agreement (ACIA), the ASEAN Free Trade Agreement (AFTA), and the ASEAN Framework Agreement on Services (AFAs); and
b. important new-generation FTAs, including the European and Vietnam Free Trade and Investment Agreements (EVFTA and EVIA), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Local Laws and Regulations

Vietnam has embarked on a vast program to reform its legal and regulatory framework for investment, including those undertakings considered conditions precedent to Vietnam's WTO accession, and frequently amends the local laws to adapt to the significant changes in the market economy. Key local laws relevant to foreign investors in Vietnam are the Law on Investment No. 61/2020/QH14 ("**Investment Law**") and Law on Enterprise No. 59/2020/QH14 ("**Enterprise Law**"), which were both released on 17 June 2020 and took effect from 1 January 2021. The Investment Law and the Enterprise Law contain remarkable changes with an aim to make Vietnam a more attractive investment destination.

Foreign Investment Restrictions

1. Eligibility

   As a member of the WTO and as signatory to other international treaties, Vietnam has committed to open many sectors to foreign investment, however, Vietnam is still allowed to restrict market access in respect of several industries and businesses. The application of such restrictions will follow the set of rules regulated by the Vietnamese government.

   Under the Investment Law, foreign individuals and organizations of any nationality (the "**Foreign Investor**") are entitled to set up a foreign invested enterprise (or "economic organization with foreign investment capital" as defined under the Investment Law, "**FIE**") in Vietnam, except for those engaged in:

- Industries and trades for which there has not yet been market entry approval / market access is not yet allowed, which are detailed in the List of Restricted Sectors *(*as defined below); and/or
- Prohibited sectors, including, among others, business in drugs, prostitution, trading firecrackers, human trafficking and debt recovery business services.

2. Investment Conditions Applicable to a Foreign Investor

Under the Investment Law and its guiding documents, major investment conditions for foreign investors are separated into two groups:

- **Group 1 - Business investment conditions**, which apply to any individual or entity (regardless of whether such entity is an FIE or otherwise) engaging in certain conditional business lines; and

- **Group 2 - Market access conditions**, which the Foreign Investor must satisfy to invest in certain restricted sectors (a list of which, the "**List of Restricted Sectors**"). The List of Restricted Sectors further comprises two "smaller" groups: (i) the list of industries and trades for which there has not yet been market access approval; and (ii) the list of industries and trades for which market access is conditional.

Foreign Investors are entitled to the same market access conditions applicable to domestic investors for any sector not included in the List of Restricted Sectors. With respect to sectors where market access is conditional, the Foreign Investor must satisfy all relevant conditions published on the National Portal on Foreign Investment[9] operated by the MPI. Under the Investment Law, such conditions may comprise: the ratio of foreign ownership, forms of investment, scope of investment operation, capacity of the Foreign Investor, and other specialized conditions *(if any)*.

With respect to business lines which Vietnam has not made a commitment allowing market access to Foreign Investors, or has reserved the right to adopt certain measures that may be inconsistent with its obligation of approving market access:

- If Vietnamese laws do not provide market access conditions, the Foreign Investor will be entitled to the same conditions applicable to domestic investors.
- If Vietnamese laws contain any restrictive provisions regarding market access applicable to the Foreign Investor, the Foreign Investor must comply with such provisions.

For the list of Restricted Sectors, is referred to **Error! Reference source not found.** of this Chapter.

3. Foreign Ownership Limitations

In general, there are certain circumstances in which foreign investment is restricted in terms of ownership ratios, *inter alia*:

[9] https://vietnaminvest.gov.vn

(a) foreign investment in certain sectors for which the foreign investors must establish a JV with Vietnamese partners, such as: Electronic games business (CPC 964), which require at least 51% Vietnamese shareholding; Film production services (CPC 96112), which require at least 49% Vietnamese shareholding, etc.;

(b) foreign investment in banking services, i.e., if a foreign bank wants to acquire shares in a Vietnamese-established joint stock bank, the total foreign equity must not exceed 30% of the charter capital (registered equity) of such bank;

(c) foreign investment in public / listed companies, i.e., there exists a 50% cap on foreign investment as mentioned above; and

(d) state-owned enterprises undergoing the process of equitization, for which the specific foreign ownership limits are specified in the equitization plan.

Common Forms of Foreign Investment

Under the Investment Law, foreign (inward) investment forms are no longer grouped under direct or indirect investment, even though the terms / concepts of "direct investment" and "indirect investment" are still mentioned in several guiding regulations.

There are three common forms of foreign investment as follows, amongst others:

a. Establishment of a commercial presence in Vietnam, i.e., an representative office ("**RO**"), Branch, or setting up an FIE to implement an investment project;
b. Capital contribution or purchase of shares / stakes; and
c. Business cooperation contract.

1. Establishment of a Commercial Presence

Establishment of an RO (Representative Office

ROs are a common form of early or initial establishment for foreign corporate investors who are looking to invest or do business in Vietnam. An RO is allowed to conduct market surveys and undertake a number of commercial promotion activities permitted by the laws of Vietnam. The key limitation of the scope of activities of an RO is that it is not allowed to engage in any "direct profit-making" activities.

For setting up an RO, an investor will need to obtain operation licenses from the Provincial Department of Industry and Trade ("DOIT"), or the Zones Management Authority (if the RO is located in the Industrial Zones ("IZs"), Economic Zones ("EZs"), Economic Zones ("EPZs"), or high-tech zones), which requires the foreign investor to have, inter alia, at least one (1) year of active operation in its home jurisdiction. With respect to certain highly-regulated industries (like insurance or banking), the operation licenses will be issued by other governmental authorities (not the DOIT) in accordance with relevant laws, e.g., operation licenses for the RO of foreign insurance companies and foreign banks are issued by, respectively, the Ministry of Finance ("MOF") or the State Bank of Vietnam, in accordance with the Law on Insurance Business and the Law on Credit Institutions.

Establishment of a Branch

A branch is a dependent unit of the foreign corporate investor, which is permitted to conduct commercial activities / "direct profit-making" activities in Vietnam in accordance with the law of Vietnam or an international treaty to which Vietnam is a member.

The foreign corporate investor is required to be duly established and operating under the laws of their home country for at least five (5) years to be eligible to apply for the establishment of the branch in Vietnam. Applications for branch operation licenses are submitted to, and issued by the MOIT as the licensing authority. The timeline for issuance of branch operation licenses is seven (7) working days from the date of submission.

In practice, a branch is not a common form of commercial presence in Vietnam, and this form of investment is only open for foreign investors engaging in certain sectors like banking, financial and construction services.

Establishment of an FIE (Foreign Invested Enterprise)

Foreign investors who want a direct commercial presence in Vietnam and do not want to inherit an existing business can set up a (new) FIE, which may be either a wholly owned subsidiary / 100% foreign invested enterprise ("**100%FIE**"), or a joint venture ("**JV**") with foreign or Vietnamese partners.

Regardless of which specific option / type of enterprise is to be adopted, a foreign investor must (i) register for an investment project, the approval for which will be in the form of an investment registration certificate ("**IRC**"), to be issued by the Provincial Department of Planning and Investment ("**DPI**"), or if the FIE is located in the IZs, EZs, EPZs, or high-tech zones, to be issued by the Zones Management Authority, and (ii) upon completion of obtaining the IRC, obtain an Enterprise Registration Certificate ("**ERC**") to be issued by the DPI. It normally takes around one (1) month for completion of the whole process.

The IRC and ERC mark just the beginning of the legal life of the FIE, after that, a number of subsequent administrative formalities / post-licensing procedures will be required, e.g. tax registration, bank account opening, etc.

2. Capital Contribution or Purchase of Shares / Stakes

Private Equity

Foreign investors may acquire contributed capital / shares in a target company being an existing (private) Vietnamese enterprise. For such acquisition, a foreign investor will be required to obtain an approval from the DPI or the Zones Management Authority (as applicable) for proceeding with the transaction (the "**M&A Approval**"), which takes fifteen (15) working days for issuance, if the acquisition of the foreign investor results in:

(a) an increase in the ownership ratio of each foreign investor in the target company engaging in business sectors with market entry restrictions for foreign investors;

(b) an increase in foreign ownership in the target company from less than 50% to more than 50% of the charter capital; or

(c) an increase of foreign ownership in the target company where ownership already exceeds 50% of the charter capital; or

(d) utilisation of land in a national security sensitive area (e.g. coastal area).

Upon obtaining the M&A Approval, a foreign investor can proceed with the relevant registration procedure at the DPI for recording their information as the new foreign investor / shareholder of the target company, and obtain the written confirmation for the same from the DPI, which takes three (3) working days for completion.

Public Equity

Foreign investors may also invest in Vietnam by way of investment via Vietnam's stock exchange. For trading securities (either listed or unlisted), a foreign investor will be required to (i) obtain a trading code from the Vietnam Securities Depository (which is the single central securities depository), and (ii) open an IICA (indirect investment capital account) at a licensed (commercial) bank in Vietnam. Depending on the investor's preferred level of investment supervision, the foreign investor may trade their securities through a securities company, an authorized transaction representative or a local fund manager.

There exists a 50% cap on foreign investment in listed shares and public companies operating in businesses and industries having conditions applicable to foreign investors. If there is no room for foreign investors in a particular listed company, orders from foreign investors will not be processed through the trading system.

3. Business Cooperation Contract (BCC)

Different from the previous options which are entitled the foreign investor to hold a legal entity established and operating in Vietnam, a business cooperation contract ("**BCC**") is a contractual arrangement between a foreign investor and domestic partner(s), under which the parties (i) establish a coordination board to perform the BCC (of which the functions, duties, and powers are as agreed by the parties in the BCC), and (ii) may establish an operating office ("**BCC Operating Office**") in Vietnam to act as its representative during the performance of the BCC.

The investors must obtain the IRC for the performance of the BCC, and (if there is a BCC Operating Office to be set up) a registration certificate for operation of the BCC Operating Office, from the DPI or the Zones Management Authority (as applicable), each of which takes fifteen (15) working days upon receipt of a valid application dossier. Even though a BCC Operating Office is not considered a legal entity, it can open a bank account, have a seal, employ foreign and local staff, and execute commercial contracts within the scope of activities as set out in the IRC and the BCC.

Investment Capital Accounts and Remittance of Profits

1. DICA (Direct Investment Capital Account)

FIEs which are established by foreign investors and which have obtained an IRC (including 100%FIEs and JVs), and local enterprises which are acquired by foreign investor(s) which result in the foreign ownership accounting for 51% or more of its charter capital (collectively, the "**FDI Enterprise**"), must open a DICA. If the foreign direct investment is through a BCC, the foreign investor must open a DICA on its own account.

All foreign direct investment related transactions are to be handled through the DICA, i.e., from receipt of capital contribution from the foreign investors to transfer of shareholdings to profits repatriation and other allowed transactions. Foreign investors are permitted to remit their profits annually at the end of the fiscal year upon (i) fulfilling all financial obligations towards the State and submitting the corporate income tax (CIT) returns of that fiscal year to the tax department, or (ii) termination of the investment. The foreign investor is required to submit a notification of profit remittance abroad to the tax department at least seven (7) working days prior to the date of profit remittance.

An FDI Enterprise is responsible for maintaining its DICA, however, if the FDI Enterprise is listed, or the foreign ownership share of the FDI Enterprise drops below 51%, the foreign investor must close the DICA and open an IICA (as specified below) and conduct procedures for indirect investment.

2. IICA (Indirect Investment Capital Account)

A foreign investor will have to open an IICA for making indirect investment in Vietnam. In general, an IICA is a purpose-built account which allows foreign investors to disburse and receive funds related to their indirect investments. One foreign investor may only open one IICA at a time.

The foreign investor will need to deposit the foreign currency in his/her foreign currency account and exchange the currency for VND, before funding the money into the IICA. Once the money gets into the IICA, the foreign investor can start making their indirect investments, and receive the proceeds received therefrom.

For remittance of profits and other lawful income overseas gained from indirect investment activities, the foreign investor is entitled to use VND in the IICA in order to purchase foreign currency at an authorized credit institution and subsequently remit the same overseas.

Forms of Corporate Vehicles in Vietnam

Under the Enterprise Law and its guiding documents, there are four main types of enterprises in Vietnam:

- **Limited Liability Company** ("**LLC**"): An enterprise with no more than 50 members in which a member may be an organization or an individual, who shall only be liable for the debts and other property obligations of the LLC to the extent of the amount of their contributed capital. There are two types of LLCs, respectively, SM-LLC and MM-LLC;

- **Joint Stock Company** ("**JSC**") (also known as a shareholding company): An enterprise in which the charter capital is divided into equal portions called shares, with a minimum number of three shareholders. The shareholders of a JSC may be organizations or individuals, which shall also have limited liability;
- **Incorporated Partnership**: An enterprise with at least two members being co-owners of the company jointly conducting business under one common name (also known as the unlimited liability partners). Partnerships may also have partners with limited liability; or
- **Private Enterprise** (also known as a sole proprietorship): An enterprise owned by one individual who is liable for all activities of the enterprise to the extent of all his or her own assets (unlimited liability). Each individual can establish only one private enterprise. The owner of a Private Enterprise must not concurrently act as the head of a business household or be an unlimited liability partner of an Incorporated Partnership.

Below we clarify the key differences as well as some of the advantages and disadvantages of LLCs and JSCs, the two most popular corporate vehicles in Vietnam.

Issues	LLC	JSC
Required number of members / shareholders (promoters)	LLCs have two (2) types, SM-LLC and MM-LLC • 1 member for SM-LLC • 2 to 50 members, for MM-LLC	At least three (3) shareholders are required, and there is no restriction on the maximum number of shareholders.
Liabilities for the members / shareholders	Limited liability[10]	Limited liability
Issuing shares	LLCs may not issue shares, except for the purpose of conversion into a JSC.	JSCs may issue shares.
Listing on stock exchange	Not allowed, except when the LLC is listed for conversion into a JSC, provided the listing conditions are satisfied according to the Securities Law.	A JSC can be listed on an official stock exchange (e.g. HOSE or HNX), provided the listing conditions are satisfied according to the Securities Law.
Management Structure	(In order, in terms of powers) • MC (for a MM-LLC) • MC or Company Chairman (for a SM-LLC) • Chairman of MC or Company Chairman • Director / General Director (CEO), and • BOC for LLC which is compulsory if the LLC	(In order, in terms of powers) A JSC can choose one of the following models of management structure: <u>Model 1 (Two-tier Board Structure):</u> • GMS • BOD • BOC (in case of having 11 or more shareholders, and corporate shareholders holding 50% shares or more), and

[10] The member is [only] liable for the debts and other property obligations of the enterprise to the extent of the amount of capital contributed as undertaken to the enterprise.

Issues	LLC	JSC
	is a State-owned MM-LLC or the MM-LLC is a subsidiary of a State-owned enterprise or a SM-LLC of which the owner is a State-owned enterprise. MC is the highest authority of the MM-LLC, including all members of the MM-LLC. Members can be individuals or corporate entities. If a member is a corporate entity, it must appoint authorized representative(s) to participate in the MC. The single member of an SM-LLC is the highest authority because the rights and obligations of the MC or Company Chairman are authorized by that single member.	• Director / General Director (CEO) <u>Model 2 (One-tier Board Structure):</u> • GMS • BOD (in which at least 20% members / directors of the BOD must be independent directors), with an Audit Committee established under the BOD, and • Director / General Director (CEO) GMS is the highest authority of the JSC, and includes all shareholders holding voting shares. If a shareholder is a corporate entity, it must appoint one or more authorized representative(s) to participate in the GMS. BOD is the management body of the JSC, with full authority to make decisions in the name of the JSC, except for issues which fall within the authority of the GMS. The BOD consists of between three (3) and 11 members / directors, appointed and dismissed by the GMS.
Quorum for a meeting of the MC / GMS	The quorum of the meeting of a MC (for a MM-LLC) shall be: • members representing 65% or more of the charter capital for 1st convening • 50% or more for 2nd convening, or • any members present at the meeting (regardless of number) for 3rd convening.	The quorum of the meeting of a GMS shall be as follows: • shareholders representing more than 50% of the total number of voting slips for 1st convening • 33% or more for 2nd convening, and • any shareholders present at the meeting (regardless of number) for 3rd convening.
The voting thresholds for a MC / GMS resolution	A resolution of the MC (for a MM-LLC) is passed at a MC meeting if approved by members representing: • 75% or more of the total capital of participating members, for certain important matters, and • 65% or more for general matters.	A resolution of the GMS is passed at a GMS meeting if approved by shareholders representing: • 65% or more of the total number of voting slips of all attending shareholders, for certain important matters • more than 50% of the total number of voting slips of all attending shareholders for general matters, and

Issues	LLC	JSC
	A decision of the MC shall be passed by way of collection of written opinions (i.e., a circular resolution) if agreed by members holding 65% or more of the charter capital of the enterprise.	• 75% or more of the total number of preference shares for any contents which results in an adverse change of rights and obligations of such type of preference shareholders. A decision of the GMS is considered as passed by a circular resolution if approved by shareholders representing more than 50% of the total votes. For any contents which result in an adverse change of rights and obligations of preference shareholder, a decision of the GMS shall be passed if it is approved by 75% or more of the total number of preference shares of such type.
Preemptive rights for transfer of capital contribution / shares	For MM-LLCs, the members when transferring their share of capital contribution shall be subject to the preemptive rights of other members (the "**right of first refusal**").	Transfer of shares is not subject to preemptive rights unless the shareholders agreement between the shareholders provides otherwise. The only restriction is that, within three (3) years from the date of establishment of a JSC, a founding shareholder may only sell his/her shares to a non-founding shareholder upon approval of the GMS. He/she may freely transfer his/her shares to another founding shareholder. This restriction is not applicable to: (i) additional shares which founding shareholders obtain after registration of establishment of a JSC; and (ii) shares which founding shareholders assign to others not being founding shareholders of the company.

A clear advantage of a JSC is that a foreign partner / investor may always sell shares to raise capital, and it is more flexible for fund raising. It is also appropriate for an exit strategy for the foreign investor if it wants to sell shares to others.

The LLC structure is likely to be the best structure for a wholly foreign owned enterprise. The sole investor has complete control of the company and is not subject to rules governing business relationships with partners, quorums, and majority voting. The LLC structure may also be preferable for foreign investors entering into joint ventures with Vietnamese parties. In a LLC, the foreign investor may choose his/her partners, rather than in a JSC where the public may have the right to purchase shares.

Key Steps and Procedures for Establishment of an FIE

Under the Vietnamese laws, foreign investment by virtue of setting up an FIE is considered to be the implementation of an investment project by the Foreign Investor (the "**Investment Project**") and is regulated under the Investment Law; it is also regarded as the incorporation of a whole new company which is regulated by the Enterprise Law. Therefore, in order to legally set up an FIE in Vietnam, the Foreign Investor must go through the following steps:

Step 1 – Registration of the Investment Project

Under the Investment Law, the Foreign Investor must register for the Investment Project, which is divided into two types, by submitting application dossiers to relevant licensing authority(ies), as set out in the table below:

Issues	Mega Investment Project	Regular Investment Project
Project classification	Mega Investment Projects are defined under the Investment Law, which are depending on the scale subject to an in-principle approval of the competent authorities including the National Assembly, the Prime Minister or the Provincial People's Committees. To a list of Mega Investment Projects is referred **to** Error! Reference source not found. **of this chapter.**	Regular Investment Projects are the rest.
Required approvals	• Investment Policy Approval (the "**IPA**"); • IRC.	• IRC
Licensing authorities	For the IPA: • National Assembly; • Prime Minister; or • Provincial People's Committee. For the IRC: • The MPI, for the Mega Investment Projects which are subject to the issuance of the IPA by the National Assembly or the Prime Minister; • The DPI or the provincial industrial zone management authority or specific economic zone management authority (the "**IZ Management Authority**"), as the case may be, for all others.	• The DPI where the Investment Project is located; or • The IZ Management Authority if the Investment Project is located in an industrial zone, export processing zone, high tech zone or economic zone (collectively the "**Special Zone**").
Regulatory timeline	• IPA: N/A (it is subject to the level of authority to issue IPA); • IRC: Five (5) working days.	• Fifteen (15) working days.

In practice, the actual timeline for the licensing authorities to process an IRC application (and any IPA, if necessary) may extend from one month (for the IRC) up to two to three months (for an IPA).

Step 2 – Establishment of an FIE

Upon issuance of an IRC, the Foreign Investor has to apply for an ERC (*also known as a certificate of incorporation in some jurisdictions*) for establishment of the FIE. The application dossier for issuance of the ERC may be done directly, via post, or electronically on the NBRP.

The ERC will be issued for the FIE by the DPI (as the licensing authority) within three (3) working days. The ERC includes key particulars of the FIE (i.e. enterprise code, name, address, date of incorporation, charter capital and legal representatives' information).

Step 3 – Post-licensed Procedures

No.	Procedures to be taken	Details
1.	Capital contribution / Payment of registered shares	The Foreign Investor shall contribute in full the charter capital of the FIE within ninety (90) days as from the date of issuance of the ERC.
2.	Opening a Direct Investment Capital Account ("**DICA**")	Under foreign exchange control regulations, a DICA is required to be opened at a commercial bank in Vietnam for the Foreign Investor to implement all its transactions related to an FIE (e.g. capital contribution, remittance of capital and profits and other lawful revenues).
3.	Initial tax declaration	The FIE is required to make its first tax declaration and submit the licensing fee to tax authorities before the 30th of January of the year preceding the establishment year.
4.	Making a corporate seal (optional)	The FIE is free to decide the type, quantity and pattern of the seal. Under the Enterprise Law, the registration of a seal with the relevant DPI is no longer required.

Appendix 1: List of Restricted Sectors

I.	List of Industries and Trades for which Market Entry is Not Allowed
1.	Trading goods and services on the list of goods and services over which the State has a monopoly in the commercial sector
2.	Journalistic activities and news collection activities of any kind
3.	Fishing or seafood harvesting
4.	Investigation and security services
5.	Judicial administrative services including judicial assessment services, bailiff services, property auction services, notarization services, and services of asset management officers
6.	Guest worker services under contracts
7.	Investment in building infrastructure for cemeteries and graveyards to transfer land use rights associated with infrastructure
8.	Garbage collection services directly from households
9.	Public opinion polling service (survey of public opinion)
10.	Blasting services
11.	Production of and trading weapons, explosives and supporting tools
12.	Import and dismantling of second-hand ships
13.	Public postal services
14.	Business of goods trans-shipment
15.	Business of temporary import for re-export
16.	Exercising the right to export, the right to import and the right to distribute goods on the list of goods which foreign investors and economic organizations with FIC are not allowed to exercise the right to export, the right to import and the right to distribution
17.	Collection, purchase and disposal of public property at units of the armed forces
18.	Production of military materials or equipment; trading military equipment and supplies for the people's armed forces, military weapons, technical equipment, military hardware and specialized vehicles used for the army and police; and special components, parts, spare parts, supplies and equipment and specialized technology to manufacture them
19.	Trading industrial property representative services and intellectual property assessment services
20.	Services of establishing, operating, maintaining and preserving marine signals, water areas/zones, public marine navigational channels and marine routes; survey services with respect to water areas/zones, public marine navigational channels and marine routes to serve the publication of maritime notices; services of surveying, building and publishing navigational maps for water areas, seaports, marine navigational channels and marine routes; formulating and publishing marine navigational safety documents and publications
21.	Maritime safety assurance regulatory services in water bodies, water areas, and marine navigational channels; marine electronic information services
22.	Services of inspecting (checking, testing) and issuing certificates for means of transport (including systems, assembly, equipment and components of vehicles); services of inspecting and issuing certificates of technical safety and environmental protection for vehicles, specialized equipment, containers, and dangerous goods packaging equipment used in transportation; services of inspecting and issuing certificates of technical

	safety and environmental protection for vehicles and equipment used in oil and gas exploration, exploitation and transportation at sea; technical inspection services for occupational safety with respect to machines and equipment applying strict requirements on occupational safety which are installed on means of transport and equipment used in oil and gas exploration, exploitation and transportation at sea; fishing vessel registration services
23.	Services of investigation, assessment and exploitation of natural forests (including wood exploitation and hunting and trapping of rare and precious wild animals, management of the funds of plant genes, livestock and microorganisms used in agriculture)
24.	Researching or using genetic resources of new livestock breeds before being evaluated and assessed by the Ministry of Agriculture and Rural Development
25.	Business of tourism services, except for international tourism services for international tourists to Vietnam
II.	**List of Industries and Trades for which Market Entry is Conditional**
1.	Production and distribution of cultural products, including video recordings
2.	Production, distribution and broadcast of television shows and works of music, dance, theatre and cinema
3.	Provision of radio and television broadcasting services
4.	Insurance; banking; securities trading and other services related to insurance, banking and securities trading
5.	Postal and telecommunication services
6.	Advertising services
7.	Printing services and publication issuance services
8.	Measurement and mapping services
9.	Services of taking pictures from above
10.	Educational services
11.	Exploration, exploitation and processing of natural resources, minerals, oil and gas
12.	Hydropower, offshore wind power and nuclear energy
13.	Transport of goods and passengers by rail, air, road, river, sea, pipeline
14.	Aquaculture
15.	Forestry and hunting
16.	Business of betting, casino
17.	Security guard services
18.	Building, operating and managing a river port, seaport or airport
19.	Real estate business
20.	Legal services
21.	Veterinary services
22.	Goods trading and activities directly relating to goods trading by foreign service providers in Vietnam
23.	Technical analysis and testing services
24.	Travel services
25.	Health and social services
26.	Sports and entertainment services
27.	Production of paper
28.	Production of means of transport [vehicles] with over 29 seats
29.	Development and operation of traditional markets
30.	Commodity Exchange operations
31.	Domestic retail collection services

32.	Auditing, accounting, accounting books and tax services
33.	Valuation services; consulting enterprise valuation for equitization
34.	Services related to agriculture, forestry and fisheries
35.	Production/manufacturing aircraft
36.	Production/manufacturing locomotives and railway wagons
37.	Production of and trading tobacco products, tobacco raw materials, and specialized machinery and equipment for the tobacco industry
38.	Publishers' activities
39.	Ship building and repair
40.	Waste collection services, environmental surveillance [monitoring] services
41.	Services of commercial arbitration and arbitration mediation
42.	Business of logistics services
43.	Coastal sea transport
44.	Cultivation, production or processing of rare and precious crops, husbandry and breeding of rare and precious wild animals and processing and handling of such animals or plants, including live animals and their preparations
45.	Production of construction materials
46.	Construction and relevant technical services
47.	Assembling motorcycles
48.	Services related to sports, fine arts, performing arts, fashion shows, beauty pageants and modelling contests, and other recreational activities
49.	Air transport support services, ground technical services at airports and airfields; in-flight catering services; communication, navigation, surveillance services, aeronautical meteorological services
50.	Shipping agency services; shipping tugboat [ship towing] services
51.	Services related to cultural heritage, copyright and related rights, photography, video recordings, sound recordings, art exhibitions, festivals, libraries, museums
52.	Services related to tourism promotion and development
53.	Services of representation, recruitment agency and scheduling, management of artists and athletes
54.	Services related to family
55.	E-commerce activities
56.	Cemetery business, cemetery services and burial services
57.	Services of sowing seeds and spraying chemicals by plane
58.	Marine pilot services
59.	Investment industries and trades under the pilot mechanism of the National Assembly, the National Assembly Standing Committee, the Government and the Prime Minister

Appendix 2: List of Mega Investment Projects

I.	**Approved by the National Assembly**
1.	Nuclear power plants
2.	Investment projects with a requirement for conversion of the land use purpose of special use forest land, of upstream protective forest or of border protection forest of 50 hectares or more; or of protective forest as a windbreak, shelter from flying sand or breakwater/protection from sea encroachment of 500 hectares or more; or productive forest of 1,000 hectares or more
3.	Investment projects with a requirement for conversion of the land use purpose for wet rice cultivation on two harvests in an area of 500 hectares or more
4.	Investment projects with a requirement for relocation and resettlement of 20,000 people or more in mountainous areas or 50,000 people or more in other areas
5.	Investment projects which require application of a special mechanism or policy which needs to be decided by the National Assembly
II.	**Approved by the Prime Minister**
1.	Investment projects with a requirement for relocation and settlement of 10,000 people or more in mountainous areas and 20,000 people in other areas
2.	Investment projects for new construction of: airfields and airports; landing runways of airfields and airports; international passenger terminals; cargo terminals of airfields and airports with a capacity of 1 million more tons per year
3.	New investment projects for passenger aviation transport business
4.	Investment projects for new construction of ports and wharves of specialized seaports; investment in new construction of ports and wharves with a scale of investment capital of VND2,300 billion or more within the category of Grade 1 seaports
5.	Investment projects for processing of petroleum
6.	Investment projects which include business of betting and casinos, excluding business in electronic games with prizes reserved for foreigners
7.	Projects for construction of residential housing (for sale, lease or hire purchase), urban areas with a land use scale of 50 or more hectares or below 50 hectares but with a population of 15,000 or more people in such urban area; or with a land use scale of 100 or more hectares or below 100 hectares but with a population of 10,000 or more people in the non-urban area; or investment projects regardless of the size of the land area or population but within the scope of protection of relics recognized by the competent level being national and special level national heritage
8.	Investment projects for construction and commercial operation of infrastructure in industrial zones and export processing zones
9.	Investment projects of foreign investors in the following sectors: business of telecommunications services with network infrastructure; afforestation; publication, press
10.	Investment projects which at the same time fall within the authority of two or more provincial people's committees to provide the investment policy approval
11.	Other investment projects subject to the authority of the Prime Minister of the Government to provide investment policy approval or to make an investment decision as stipulated by law
III.	**Approved by the Provincial People's Committee**
1.	Investment projects requesting the State to allocate or lease land not via an auction or tendering for or on receipt of an assignment [of a land use right], and investment projects requesting permission to convert land use purpose, except for cases of land allocation, land lease or permission to convert land use purpose by family households or individuals not within the category requiring

	approval from the provincial people's committee as prescribed by [pursuant to] the law on land
2.	Investment projects for construction of residential housing (for sale, lease or hire purchase), and urban zones in the following cases: investment projects with a land use scale below 50 hectares and with a population below 15,000 people in the urban area; or on a scale of land use below 100 hectares and with a population below 10,000 people in a non-urban area; or investment projects regardless of land scale and population but within a restricted development area or within an historical inner area (determined in accordance with urban master planning projects) of a special category urban area
3.	Investment projects for construction and commercial operation of golf courses
4.	Investment projects of foreign investors and of economic organizations with foreign investment capital implemented on islands or on border or coastal communes, wards or towns and in other areas affecting national defense and security

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