



# FOREIGN DIRECT INVESTMENT REGULATION GUIDE

Editor  
Veronica Roberts

# Foreign Direct Investment Regulation Guide

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Veronica Roberts

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# Publisher's Note

Foreign direct investment is an area in flux, where the appetite – and necessity – for outside capital is running into growing national security concerns, as well as increasingly strict regulations on mergers. Although there were already controls in place before covid-19, the pandemic and a growing shift towards protectionist economic policies have crystallised these concerns more widely among governments around the world. As Veronica Roberts, Ruth Allen and Ali MacGregor point out in their introduction, there is 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.

The *Foreign Direct Investment Regulation Guide* – published by Global Competition Review – provides just such detailed analysis. It examines both the current state of law and the direction of travel for the most important jurisdictions in which foreign direct investment is possible. The Guide draws on the wisdom and expertise of distinguished practitioners globally, and brings together unparalleled proficiency in the field to provide essential guidance on subjects as diverse as the evolving perspective on deals with China to the changing face of national security – for all competition professionals.

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# Part 1

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## Key Issues and Overviews

## CHAPTER 3

# The Impact of the Covid-19 Pandemic on Foreign Direct Investment Regimes

Neil Cuninghame<sup>1</sup>

One striking international development during the past few years has been the growth of foreign direct investment (FDI) regimes. Some countries, such as the United States, Canada and Australia, have had a well-established regime for many years. However, until recently, many Western countries, including several in Europe, either had no specific FDI regime or had a regime that was narrow in scope. They instead pursued a policy of being open to foreign investment but reserving the right to intervene in limited circumstances critical to national security.

This position has changed considerably in recent years. Countries that previously did not have an FDI regime have increasingly been adopting one, and countries that did have a regime have been expanding its scope.

The covid-19 pandemic accelerated this trend. As a consequence, investors, particularly when investing in more sensitive or strategic sectors, increasingly need to factor into their deal planning the need to obtain FDI clearances, in a similar way to that in which they have for many years factored in the need for merger clearances.

This chapter considers the position that existed before the covid-19 pandemic, then explores the effects of the pandemic, some recent prohibitions and possible future changes.

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<sup>1</sup> Neil Cuninghame is a partner at Ashurst LLP. The author thanks Helen Chamberlain, solicitor at Ashurst LLP, for her considerable help in drafting this chapter.

## Before the pandemic

As noted above, FDI regimes were already in the process of being expanded before covid-19 hit. There were a number of factors driving government decision-making in this area, including:

- a belief that the risks to national security have increased significantly as a result of the growth in powerful technologies, such as artificial intelligence, quantum computing, advanced encryption technologies and materials that are capable of altering the appearance of objects or concealing them;
- concerns that some countries were seeking to enhance their global influence through acquisitions by state-owned companies, or other entities supported by state subsidies, often while not affording foreign investors similar scope to invest in their own economies;
- in a similar vein, a claimed increase in state-sponsored attempts to influence policy covertly and steal sensitive commercial information; and
- a perceived risk of 'crown jewel' businesses falling into the hands, or under the influence, of potentially hostile states.

China is frequently cited by politicians (but usually not formally by governments) as a driver of many of the increased concerns, but it is not the only state of which governments seem to be increasingly wary.

The following are a few examples of these pre-covid changes.

The EU FDI Screening Regulation<sup>2</sup> was adopted in March 2019, although it did not come fully into effect until October 2020. It provides for an EU-level mechanism to coordinate the screening of foreign investments likely to affect the security and public order of its Member States, or the Union as a whole. It sets out an obligation to exchange information between Member States and the European Commission, as well as the possibility for the Commission and Member States to issue comments and opinions on specific transactions up to 15 months after the foreign investment has been completed. However, decision-making remains with the individual Member States. The FDI Screening Regulation did not oblige Member States to have an FDI regime but many Member States have in fact adopted a new FDI regime, albeit partly driven by covid-19 in some cases.

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2 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, <https://eur-lex.europa.eu/eli/reg/2019/452/oj>.

In the United States, the Foreign Investment Risk Review Modernization Act of 2018 reformed and significantly expanded the scope of reviews by the Committee on Foreign Investment in the United States (CFIUS). The changes included extending the regime to non-controlling investments in certain categories of US businesses, real estate and other investments involving critical technologies, critical infrastructure or sensitive personal data of US citizens (known as TID (technology, infrastructure and data) businesses).<sup>3</sup> This included the introduction of mandatory notifications for certain investments in some TID businesses. Previously, CFIUS notifications were generally voluntary in principle, albeit acquirers generally took a cautious line given the broad scope of transactions that CFIUS was able to review.

In the United Kingdom, a review of national security laws began in 2016. Following a 2017 Green Paper and a 2018 White Paper, the government initially amended its powers in 2018 under the Enterprise Act 2002 to provide for significantly lower thresholds for national security intervention in three sectors: military and dual-use technologies, quantum technology and computing hardware. In a move that was not particularly driven by covid-19, the same much lower thresholds were introduced in June 2020 for deals in the artificial intelligence, cryptographic authentication and advanced materials sectors. However, these changes were always intended as short-term measures before more comprehensive reforms were brought forward. This broader reform took the form of the National Security and Investment Act (NSI Act),<sup>4</sup> which became law in April 2021 and is expected to be fully brought into effect on 4 January 2022. The NSI Act will introduce a very broad mandatory notification regime for acquisitions of targets in 17 industry sectors. Currently, the regime is voluntary, with the Secretary of State being able to intervene in transactions on national security grounds (i.e., the government is effectively able to call in transactions for a national security review).

### **The impact of covid-19**

The covid-19 pandemic led to further growth in FDI regimes. Some of the key reasons for this were:

- a realisation that a wider range of businesses may be important for fighting pandemics directly. For example, many regimes would not historically have captured, at least clearly, companies working on vaccines or producing personal protective equipment;

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3 For further details, see the United States chapter of this Guide.

4 <https://www.legislation.gov.uk/ukpga/2021/25/contents/enacted>.

- international supply chain disruption caused by covid-19 brought home to governments that reliance on non-domestic suppliers for basic necessities was less than ideal; and
- a belief that businesses that are important to a country, either because of the products or services they supply or the number of jobs they provide, might be picked up by opportunistic foreign investors ‘on the cheap’ while they were temporarily weak because of covid-19.

As a result, a significant number of countries lowered their thresholds for review. For example:

- from 29 March 2020, the monetary screening thresholds for mandatory review under the Australian Foreign Acquisitions and Takeovers Act were temporarily reduced to zero for all foreign investments in Australia. For most companies, the monetary threshold would normally have been A\$266 million, although it was lower in certain sectors. These changes meant that any proposed foreign investment required approval from the Foreign Investment Review Board (FIRB), regardless of the value of the investment or the nature of the foreign investor, where the other conditions of a significant or notifiable action were also met. FIRB also extended the time frame for reviewing applications from a standard 30 days to up to six months;<sup>5</sup>
- the Canadian authorities announced on 18 April 2020 that there would be enhanced scrutiny of FDI of any value, controlling or non-controlling, in Canadian businesses related to public health or involved in the supply of critical goods and services to Canadians or the government by state-owned enterprises (or by private investors assessed as being closely tied to, or subject to direction from, a foreign government). Additionally, from 31 July 2020, certain review periods for national security screenings and reviews were temporarily extended in light of the pandemic, to remain applicable until 31 December 2020;<sup>6</sup> and
- in France, in July 2020, a decree lowered the threshold (from 25 per cent to 10 per cent) for stakes acquired by investors from outside the European Union and European Economic Area in French listed companies active within the sectors subject to foreign investment control regulation. These

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5 See also the Australia chapter of this Guide.

6 Government of Canada, ‘Temporary Extension of Certain Timelines in the National Security Review Process Due to COVID-19’, <https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81225.html>.

transactions became notifiable and the relevant minister was given 10 days to decide whether the transaction should undergo a prior authorisation process. Although expressed as temporary and set to end on 31 December 2020, on 18 December 2020 it was announced that the provisions would be extended for a further year (until 31 December 2021), given the continuing effects of the pandemic.<sup>7</sup>

Various countries also expanded the scope of sectors or range of entities that were subject to review, for example, to include medical businesses as sensitive or critical businesses within the scope of the regimes. These included the following:

- In Germany, on 20 May 2020, the 15th amendment to the Foreign Trade and Payment Ordinance came into force, providing, among other changes, that foreign acquisitions of at least 10 per cent in German companies developing, manufacturing or producing vaccines, medicines, protective medical equipment and other medical goods for the treatment of highly infectious diseases require prior mandatory authorisation.<sup>8</sup>
- In Japan, from 15 July 2020, the government began to require pre-investment notification filing for foreign investors in companies manufacturing medicines or pharmaceutical products, or highly managed pharmaceutical devices.<sup>9</sup>
- In Italy, from 9 April 2020, a decree expanded the strategic sectors to which mandatory notification applies to align with the European Commission's March 2020 FDI Guidelines (see below). The decree also expanded the scope of review required, such that screening is required for acquisitions in the strategic sectors by EU entities as well as non-EU entities (whereas previously this screening applied to EU entities only if the acquisition concerned the defence and national security sectors). Furthermore, the decree introduced a threshold for review of acquisitions by non-EU entities of 10 per cent of

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7 See government press release, at <https://www.tresor.economie.gouv.fr/Articles/4e404461-21e3-403f-b765-943442285fa6/files/5413f909-2a53-4087-ab2d-28369e8d1c64>; see also Reuters article, at <https://www.reuters.com/business/finance/exclusive-france-extends-tougher-screening-foreign-investments-through-2021-2020-12-18/>.

8 See Federal Ministry for Economy and Energy press release, at <https://www.bmwi.de/Redaktion/DE/Pressemitteilungen/2020/20200520-altmaier-wir-wollen-unsere-sicherheitsinteressen-im-gesundheitssektor-umfassender-schuetzen.html> (in German).

9 'Japan to impose foreign investment curbs in pharmaceutical sector from 15 July', *PaRR* (15 June 20), <https://app.parr-global.com/intelligence/view/prime-3053584> (subscription required).

the voting rights, as well as any subsequent acquisition exceeding 15 per cent, 20 per cent, 25 per cent and 50 per cent (provided that the investment value exceeds €1 million).<sup>10</sup>

- In France, from 1 May 2020, biotechnologies were included in the list of critical technologies that are subject to foreign investment screening by the French government.<sup>11</sup>
- In the United Kingdom, with effect from 23 June 2020, there was an extension of the criteria on the basis of which the UK government can intervene in mergers on public interest grounds, to include the need to maintain in the United Kingdom the capability to combat public health emergencies and to mitigate their effect. This intervention ground joined the existing specified public interest grounds of national security, media quality and plurality, and the stability of the financial system.<sup>12</sup>

In addition, in response to the covid-19 pandemic, the European Commission published FDI Guidelines on 25 March 2020,<sup>13</sup> urging Member States:

- to be particularly vigilant to avoid a sell-off of EU businesses;
- to make full use of existing national foreign investment screening mechanisms to take fully into account the risks to critical health infrastructure, supply of critical inputs and other critical sectors (a non-exhaustive list was provided); and
- for those Member States that did not at that time have a (fully established) screening mechanism, to set one up and, in the interim, to use all other available options to address cases in which a foreign acquisition would create a risk to security or public order.

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10 'Urgent measures concerning the exercise of special powers in the sectors of strategic relevance', Ashurst (14 April 2020), <https://www.ashurst.com/en/news-and-insights/legal-updates/urgent-measures-concerning-the-exercise-of-special-powers-in-the-sectors-of-strategic-relevance/>.

11 'Covid-19 | Update of the foreign direct investment screening procedure in France', Directorate General of the Treasury (30 April 2020), <https://www.tresor.economie.gouv.fr/Articles/2020/04/30/covid-19-update-of-the-foreign-direct-investment-screening-procedure-in-france>.

12 'Enterprise Act 2002: Changes to the public interest grounds for intervention in merger cases – Guidance 2020, Department for Business, Energy and Industrial Strategy (June 2020), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/924368/enterprise-act-2002-guidance-merger.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924368/enterprise-act-2002-guidance-merger.pdf).

13 [https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc\\_158676.pdf](https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158676.pdf).

The Commission also announced during a meeting of trade ministers, on 16 April 2020, that it was ready to begin information cooperation with Member States on FDI screening, notwithstanding that the FDI Screening Regulation would not come into force until October 2020.<sup>14</sup>

At the time of these steps by the Commission, 13 EU Member States had FDI screening mechanisms (excluding the United Kingdom, which was formally no longer an EU Member State from 31 January 2020). As at 14 July 2021, that had increased to 18.<sup>15</sup>

Most of the extended regimes brought into place have been mandatory in nature. For example:

- on 18 June 2020, Hungary introduced a temporary screening mechanism (applicable until 30 June 2021), which provided additional restrictions to protect Hungarian companies in specific sectors. The new mechanism expanded the sectors in which mandatory prior notification was required for acquisitions by investors from outside the European Union and European Economic Area;<sup>16</sup> and
- on 16 June 2020, amendments to the New Zealand Overseas Investment Act came into force. These amendments introduced a new national interest test for the country's most strategically important assets, and a temporary measure applying the national interest test to any foreign investments resulting in an interest of 25 per cent or more, or increasing an existing interest in a New Zealand business to 50 per cent, 75 per cent or 100 per cent, regardless of investment value.<sup>17</sup> The new measures included a new emergency notification regime that requires overseas persons to notify the government of certain investments with a controlling stake in an existing business or business assets, even if it was below the ordinary screening threshold of NZ\$100 million (or higher if a free trade agreement applies).

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14 [https://ec.europa.eu/commission/commissioners/2019-2024/hogan/announcements/introductory-statement-commissioner-phil-hogan-informal-meeting-eu-trade-ministers\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/hogan/announcements/introductory-statement-commissioner-phil-hogan-informal-meeting-eu-trade-ministers_en).

15 [https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157946.pdf](https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf).

16 <https://www.vbb.com/insights/FDI/Hungary>.

17 'Better protection for New Zealand assets during COVID-19 crisis', Beehive (28 May 2020), <https://www.beehive.govt.nz/release/better-protection-new-zealand-assets-during-covid-19-crisis>.

One notable feature of the changes introduced as a result of covid-19 is that although many of were expressed to be temporary, some have either been significantly extended or, in some cases, made permanent. For example:

- in Spain, a new FDI control regime was introduced on 18 March 2020 (and amended on 4 April 2020). This provides that foreign investments resulting in the acquisition by investors from outside the European Union and the European Free Trade Association (EFTA) with 10 per cent or more of the share capital (or leading to the effective management or control) of Spanish companies active in certain strategic sectors are subject to prior authorisation. Authorisation requirements were also introduced for EU investors in these sectors.<sup>18</sup> On 25 June 2021, the regime was extended until 31 December 2021.<sup>19</sup> Although the application of new rules introduced in the context of the covid-19 pandemic is currently expected to cease to apply to EU investors after 31 December 2021, the introduction of the new sectors that are covered is likely to remain in force for non-EU and non-EFTA investors; and
- in India, on 17 April 2020, the government announced that any investment (or transfer of ownership or investment) by an entity incorporated in a country that shares a land border with India would require mandatory government approval, regardless of the sector.<sup>20</sup> This applies to investors from China (including Hong Kong), Bangladesh, Pakistan, Bhutan, Nepal, Myanmar and Afghanistan, but was largely viewed as being targeted at Chinese investment. Although the expansion was introduced as a direct result of covid-19, it is not understood to be a temporary measure; therefore investors from neighbouring countries will remain subject to tighter review processes.

### **Has the pandemic affected decision-making?**

The recent growth in FDI regimes, fuelled in part by covid-19, has led to transactions being subject to FDI reviews more often than would have been the case historically, with many now being subject to reviews in multiple countries in a way that was much less frequent in the past.

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18 See also the Spain chapter of this Guide.

19 <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3741/spain-restrictions-on-foreign-investment-extended-until-the-end-of-2021>.

20 [https://dpiit.gov.in/sites/default/files/pn3\\_2020.pdf](https://dpiit.gov.in/sites/default/files/pn3_2020.pdf).

In addition, the intensity of review under foreign investment rules has generally increased in recent years, with reviews often taking longer than was the case formerly, and parties more frequently being required to enter into some form of remedy (albeit this typically falls short of prohibition).

There have also been some notable prohibitions.

In December 2020, the federal government in Germany prohibited the acquisition of communications technology company IMST by Addisino Co Ltd, a subsidiary of the state-owned China Aerospace and Industry Group Co Ltd. IMST is an industrial engineering and design house that specialises in radio technologies and microelectronics. Addisino manufactures radar electronic systems and produces and sells military communication and electromagnetic protection products. The prohibition decision is not public but it is understood that the transaction was thought to raise national security concerns given that IMST was considered to be an important provider of satellite communication, radar and radio technology, with significant know-how in these sectors that was needed for the construction of critical infrastructure, such as 5G networks. IMST is a partner of the German Aerospace Centre and a supplier to the German national army.<sup>21</sup> The Federal Ministry of Defence had purchased its data for calculating a 3D elevation model, which is used, for example, in reconnaissance, command and control, simulation and weapon systems for military purposes. In addition, the 5G technology is important, and IMST's mobile radio systems are used by police forces.<sup>22</sup> It is notable that the prohibition came before the 17th amendment to the Foreign Trade and Payment Ordinance came into force in May 2021. This introduced mandatory reviews for 16 additional 'critical activities', some of which might have been applicable to this transaction (e.g., critical infrastructure, covering, among other things, network and communication technologies, as well as cybersecurity and aerospace).

In January 2021, Australia blocked a proposed acquisition of national building contractor Probuild by the state-owned China State Construction Engineering Company.<sup>23</sup> FIRB decisions are not published, and the Treasurer

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21 'Germany blocks Chinese takeover of satellite firm on security concerns', Reuters (8 December 2020), <https://www.reuters.com/article/uk-germany-china-m-a-idUKKBN2811U0>.

22 <https://www.lexology.com/gtdt/tool/workareas/report/foreign-investment-review/chapter/germany> (subscription required).

23 'Australia cites national security to block China buying builder', *Financial Times*, <https://www.ft.com/content/3b233463-9eeb-4781-ab0c-50c3861d142d> (subscription required).

has not commented on the decision, but it is thought that Probuild's involvement in building police headquarters and other sensitive sites may have motivated the decision.<sup>24</sup>

In the United States, in August 2020, President Trump issued an Executive Order that required ByteDance, a Chinese company, to divest its US operations of the popular video-sharing app TikTok.<sup>25</sup> This was driven by similar concerns that had previously led CFIUS to require Beijing Kunlun Tech Co, a Chinese gaming company, to sell Grindr, the gay dating app, owing to fears that the Chinese government could access and use personal data that users submit on the Grindr app to potentially blackmail US citizens. It was noted that Grindr's users may include US officials and military personnel.<sup>26</sup>

In Italy, Shenzhen Invenland Holdings Co's acquisition of a 70 per cent stake in LPE SpA, which is active in the production of semiconductors, was prohibited by the government in March 2021. It was reported that the Italian Prime Minister had said that a shortage of semiconductors in 2019 had led automotive companies to slow down production, which meant that semiconductors had become a strategic sector.<sup>27</sup>

Drawing conclusions from the various prohibitions is not entirely straightforward given that decisions are not typically published. However, concerns about Chinese influence are evidently a key consideration, whether that is in the context of companies active in the defence sector, companies that hold significant volumes of personal data, or other entities. Concerns directly driven by covid-19 appear to be less prominent.

However, not all prohibitions have been targeted at Chinese investors. On 18 December 2020, the French government prohibited a foreign investment for the first time. It concerned the proposed takeover of the French company Photonis by the US-based NYSE-listed company Teledyne Technologies. Photonis

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24 'Why did the government block the China-led Probuild sale? What does this mean for mergers and acquisitions?', Smart Company (14 January 2021), <https://www.smartcompany.com.au/finance/probuild-sale-china-blocked-australian-government/>.

25 'Trump orders ByteDance to divest from its U.S. TikTok business within 90 days', CNBC (14 August 2020), <https://www.cnbc.com/2020/08/14/president-trump-orders-bytedance-to-divest-from-its-us-tiktok-business-within-90-days.html>.

26 'Grindr sold by Chinese owner after US national security concerns', *Financial Times*, <https://www.ft.com/content/a32a740a-5fb3-11ea-8033-fa40a0d65a98> (subscription required).

27 'China Targeted Milan Semiconductor Firm Before Draghi's Veto', *Bloomberg* (9 April 2021), <https://www.bloomberg.com/news/articles/2021-04-09/china-targeted-milan-semiconductor-firm-before-draghi-s-veto>.

manufactures and supplies photo-sensor imaging technologies, including in particular night vision technologies that are used by the French army. Teledyne is involved in aerospace and defence technologies. As in most jurisdictions, decisions are not published but it is understood that the deal was thought to raise concerns regarding France's technological sovereignty. Whether the same decision would have been made prior to the pandemic is an interesting matter for debate.

France has not been shy of challenging Canadian investment either. In January 2021, food security concerns were raised in relation to the proposed acquisition of France's largest grocery chain, Carrefour, by Alimentation Couche-Tard, a Canadian convenience store operator.<sup>28</sup> This is understood to have led to the deal being dropped.

### **What further changes can be expected?**

The trend of expansion of FDI and national security regimes is likely to continue. For instance, in the European Union, it is expected that additional EU regimes will be introduced or expanded. By way of example, the Netherlands is in the process of introducing a more expansive FDI regime: its current regime is essentially limited to the gas, electricity and telecommunications sectors. Delays in forming a new government following the March 2021 elections have meant the proposed legislation has not been progressed. New FDI regimes are also expected to be introduced in other EU countries, including Belgium, Luxembourg and Ireland.

In a related development, on 17 June 2020, the European Commission published a White Paper on levelling the playing field as regards foreign subsidies.<sup>29</sup> The White Paper sets out the Commission's initial proposals aimed at reducing distortions to the EU internal market as a result of subsidies from non-EU governments. At the time, the Commission said it intended to introduce legislation in 2021. There are three main strands to the Commission proposals:

- a compulsory prior approval mechanism for subsidised acquisitions;
- a compulsory notification mechanism for bidders participating in public procurement processes who are backed by foreign subsidies; and
- a general instrument to control the distortive effect of foreign subsidies.

A legislative proposal is expected to be published in the coming months.

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28 'France raises food sovereignty concern about Couche-Tard's \$20 billion offer for Carrefour', Reuters (13 January 2021), <https://www.reuters.com/article/idUSKBN2911CL>.

29 [https://ec.europa.eu/competition/international/overview/foreign\\_subsidies\\_white\\_paper.pdf](https://ec.europa.eu/competition/international/overview/foreign_subsidies_white_paper.pdf).

As noted above, the new UK NSI Act is expected to enter into force on 4 January 2022. Additional guidance on the operation of the new regime is anticipated in the coming months.

## Conclusions

In the past few years, there has been significant expansion in the scope of FDI and related regimes internationally. This was a trend that was under way before the covid-19 pandemic but was accelerated by it. Most investors are unlikely to be viewed as 'problematic' acquirers and, therefore, are likely to be approved under FDI regimes in a large majority of cases. Nevertheless, the growth in FDI regimes has significant repercussions for investors.

Deals are more likely to trigger FDI controls than historically, at least where an investor is investing outside its home nation (or outside the European Union in the case of EU investors). This is likely to affect transaction timetables as additional regulatory approvals may be required. Even investors from countries that are unlikely to be viewed as potentially hostile may have remedies imposed on them more frequently, for example to preserve domestic capability. Further, in some cases, prohibitions may be imposed, as we have seen with the French objections to US and Canadian acquirers outlined above.

Investors will need to consider not only their own position but also that of any investment partners. This could affect the attractiveness of sovereign wealth funds and state-owned enterprises as co-investors. It may also increase the extent to which foreign investors look to work in tandem with local investors.

Although some of the recent changes in FDI regimes may be a consequence of the pandemic, most of the factors driving the growth of these regimes are not short term. Accordingly, investors need to ensure that they are factoring FDI approvals into acquisition strategies at an early stage.

## **APPENDIX 1**

# About the Authors

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Neil Cuninghame is a partner in Ashurst's competition and regulatory department, practising from London and Dublin. He specialises in providing advice on all aspects of UK and EU competition law. This includes advising on EU, UK and other merger control regimes, acting for clients in relation to alleged anti-competitive practices and agreements before the European Commission, Competition and Markets Authority and other regulators, and advising on market investigations, competition law compliance, competition disputes, and state aid and subsidy issues.

Neil also advises clients on foreign direct investment and national security regimes internationally, including the new UK National Security and Investment Act 2021.

In addition, Neil advises on other regulatory issues in the energy and infrastructure sectors.

Neil advises clients across a wide range of industries, including (amongst others) energy, petrochemicals, resources, infrastructure, financial services, investment funds, media, property services, and metals and mining.

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While the appetite – and necessity – for outside capital remains unabated, increasingly this is running into national security concerns, as well as stricter regulations on mergers. Although controls on foreign direct investment were already in place before covid-19, the pandemic and a growing shift towards protectionist economic policies have brought these concerns into sharper focus for governments. The *Foreign Direct Investment Regulation Guide* – edited by Veronica Roberts – provides practical and timely guidance for both practitioners and enforcers trying to navigate this fast-moving environment. The Guide draws on the wisdom and expertise of distinguished practitioners globally to provide essential guidance on subjects as diverse as the evolving perspective on deals with China to the changing face of national security.

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