

Global Investment Control Expertise – CFIUS, FDI and NSIA

Our global team has significant experience in dealing with Ministries and Agencies around the world on both the most complex transactions and those that are more straightforward.

We will quickly determine when CFIUS, Foreign Direct Investment (FDI) or NSIA filing requirements are triggered and assess the implications for the deal structure before handling all aspects of the filing and approval process. We understand the commercial realities that drive cross-border deals and help to structure transactions so as to minimise regulatory hurdles and ensure a timely closing.

- Decades of experience dealing with CFIUS, starting from the second filing ever made and dealing with more or less 5% of all CFIUS cases annually
- An established presence in key jurisdictions where FDI control is particularly strong – e.g., France, Germany, the UK, Italy, Australia and Spain
- Experience in jurisdictions with developing or emerging FDI rules (Belgium, Slovakia, Poland)
- Significant results in complex matters, including those requiring remedies and commitments
- Our extensive experience ensures that we are a cost-effective team
- We have credibility and close contacts with the enforcement authorities

We pride ourselves on being pragmatic and responsive, and we always take into account the business goals and timetable of our client. We will manage the filing process from start to finish, allowing you to focus on getting the deal done. We have the integrated resources around the world to ensure seamless, consistent support. We have a leading practice and are highly ranked by legal directories. Most importantly, we are trusted by our long-standing clients.

Our global team includes more than 20 specialised lawyers who share their wealth of knowledge and experience across our international group. We will select an appropriately experienced team from within the practice group that will best serve the needs of the client. In all cases, we will take the necessary steps to ensure that the work is done in a cost-efficient manner.



One-of-a-Kind Combination of Legal and Policy Expertise

We have a market-leading public policy practice, comprising regulatory and government experts that work alongside our foreign investment team. This combination has proved to be highly effective in major transactions when the benefits of the transaction need to be brought to the attention of all concerned stakeholders. Our team of former parliamentarians, diplomats and administrative officials provides unique insights and guidance, which greatly minimises the risk of a transaction being blocked or requiring undertakings.

Full integration with Merger Control Team

In many cases merger control and FDI go hand in hand when it comes to ensuring that transactions can complete timely. While the substantive analysis differs significantly, in both cases it is important that information flow is controlled, that the deal team has clear information on timing and that no gun-jumping occurs. In each transaction we therefore appoint one overall coordinator – who is both an expert of merger control and FDI – as the client's point of contact, who will coordinate all other SPB teams and local counsel and who has full control about information and timing and will provide regular status reports. Our merger control team is highly skilled and experienced, regularly appearing in high profile cases and being trusted by long-standing clients on multi-jurisdictional filings everywhere in the world. We pride ourselves that a smooth cooperation is also our top priority in those matters where we are instructed for our specific expertise in CFIUS, NSIA or in a specific country's FDI laws and work jointly with different merger control counsel. The client's satisfaction is always our top priority.

FDI Control Is Catching up to Merger Control

Recent trends in FDI control regimes resemble developments in merger control in the 1990s. More and more countries introduce regimes, ramp-up enforcement and assume jurisdiction over global transactions. Where existing regimes are in place, they tend to be extended, like in the US, where the CFIUS regime was broadened under the Trump administration, with no signs that the policy will be reversed. The UK's FDI regime is even stricter than its merger control regime, requiring mandatory notifications where the latter is based on voluntary filings. In the EU, FDI control is essentially national, and EU harmonisation is limited to common minimum standards and information exchange. New regimes appear in Asia, notably, in China.

It does not require a lot of foresight to predict that M&A counsel around the world will have to start thinking about FDI control in the same terms as merger control – a major factor to be taken into account when assessing deal certainty and deal timing.

Scope of FDI Regimes – No Longer Limited to Military and Defence

FDI has a broad scope of application that differs from country to country. The following serve as an illustration (being the areas where we have had to make filings or advise on FDI control):

- 3-D printing
- Advanced polymers
- Aerial imagery and mapping
- Aerospace
- Food distribution
- Aluminium
- Autonomous vehicles
- Chemicals
- Composites
- Cybersecurity
- Data centres
- Defence
- Electric vehicles
- Electromechanical components
- Energy
- Health care
- Manufacturing automation
- Media
- Precision manufacturing
- Semiconductors
- Telecommunications



FDI Control vs Merger Control – Key Differences at a Glance

	FDI Control	Merger Control
Timing	Even unproblematic cases take significant amount of time (e.g. US – three to five months; Germany and Spain – up to six months). Phase II investigations are frequently opened as authorities are overwhelmed, not necessarily because of concerns.	Relatively short in unproblematic cases (e.g., US – four weeks; EU – 25 working days plus pre-notification; Germany – one month). Only China typically generates timing issues. Cases with substantive issues can take significantly longer.
Which Transactions?	Acquisitions of share capital/voting rights as low as 10% in Germany or Spain. Only foreign buyers are affected in EU member states (exception: UK); this means, outside pure defence, typically non-EU buyers (exception: France).	Acquisitions of control (via share capital or voting rights). Acquisitions of minority shareholdings are rarely caught (notable exception: Germany > 25%). Buyer nationality is irrelevant.
Which Industries?	No universal rule: very broad scope in the US, broad scope in UK, much narrower scope in EU Member States.	All.
Is Filing Mandatory?	No universal rule. In the US, broad scope is counterbalanced by many filings being voluntary. In EU Member States, filings are often mandatory, but the industry scope is often narrower. In the UK, filing is mandatory in identified key sectors.	Typically yes. Parties must not close before approval by all applicable authorities worldwide. The notable exception is the UK, where filing is voluntary.
Jurisdictional Trigger Point	Typically requires local acquisition (notable exception: UK); no de minimis sales threshold required.	Typically based on commercial activity within a country, e.g. turnover or market share thresholds; no local physical presence required.
Predictable Outcomes?	Decisions depend on national policies and are politically, rather than economically, motivated. Policies can be diametrically opposed, e.g. a UK company buying a business with activities in the US and China.	Normally, yes: Review is based on economics with well-established theories of harm. Often the same issues will arise globally, or at least within a region.

Recent CFIUS, FDI and NSIA Experience

The following are selected examples of the matters that we have advised on recently.

- **US PE-backed data company** – Securing FDI clearances in seven jurisdictions in Europe and Asia Pacific and coordinating all regulatory aspects in an acquisition of a data processing company.
- **Japanese supplier for semiconductor industry** – Securing FDI clearances in four jurisdictions (the US, the UK, Germany and France, including a second phase) and coordinating all regulatory aspects in relation to an investment in a manufacturer of products required for the manufacture of semiconductors.
- **Middle Eastern investor** – Obtained an EU phase 2 approval in Italy, based on intervention by third countries and coordinating all regulatory aspects in an acquisition in an EU and US chemical business.
- **US aerospace and electronics company investor** – Securing French merger control approval (second phase) in a highly publicised and politically challenging acquisition of a French manufacturer of electronic products. This was made possible by an innovative approach that ultimately persuaded the French Ministry to approve the transaction against significant opposition.
- **Unparalleled number of CFIUS filings** – Executed approximately 5% of all Committee on Foreign Investment in the US (CFIUS) filings within the last three years alone, including:
 - Securing CFIUS clearance in relation to an acquisition by a Chinese buyer in the automotive sector
 - Securing CFIUS clearance in relation to two separate acquisitions by EU buyers in the semiconductor industry
 - Securing CFIUS clearance in relation to an acquisition by an Indian buyer and an acquisition by a Japanese buyer in the autonomous vehicles space
 - Securing CFIUS clearance in relation to an acquisition by a Singapore buyer in the advanced software engineering and fabless semiconductor industry
 - Securing CFIUS clearance in relation to an acquisition by an EU buyer in the additive manufacturing industry
- **US mitigation assistance** – The firm routinely negotiates with CFIUS to resolve national security concerns and counsel in compliance of such transactions with ongoing national security agreement obligations post-closing.
- **Italian FDI Experience** – In 2022 and 2023 alone we have advised on eight matters before the Italian ministry, including in the artificial intelligence, IT, chemical and manufacturing sectors. Italy has a very active regime with a significant number of filings and we are on the forefront of developments.
- **Energy storage company** – Advice on NSIA and foreign direct investment (FDI) in multiple jurisdictions in connection with a transaction in the energy storage sector, with a particular focus on the UK and Australia.
- **Global data, insights and consulting company** – Advising on the NSIA aspects in relation to the acquisition of a data collection company.
- **Technology/engines manufacturer (advanced materials/military and dual use)** – Advice on the application of NSIA to a fundraising round and possible future equity investment round.
- **Telecommunications company** – Advice on the application of NSIA to a transaction involving the acquisition of a UK telephony, broadband and payment systems provider.
- **Semiconductor industry client** – Advising on German FDI aspects in relation to an acquisition in the semiconductor industry.
- **Telecommunications company** – Successful application for a clearance certificate from the German Ministry in relation to a transaction in the telecoms, digital and media sector.
- **Manufacturing company** – Successful application for a clearance certificate from the German Ministry in relation to a transaction in the manufacturing sector.
- **Technology company** – Advising a client in relation to an FDI clearance certificate (*Unbedenklichkeitsbescheinigung*) from the German Ministry.
- **Solar energy company** – Advising in relation to an FDI clearance certificate (*Unbedenklichkeitsbescheinigung*) from the German Ministry.



US – The Most Advanced Jurisdiction in FDI Control

CFIUS

The role of CFIUS is to examine the potential national security risks associated with the proposed foreign investment into the US. If the committee determines a transaction would be against the national security interests of the US, CFIUS will work to mitigate the threat, if possible, or recommend to the President that he block the transaction or force divestiture for complete transactions. The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) both expanded CFIUS authority and reaffirmed the US commitment to “foreign investment, consistent with the protection of national security policy”.

What Any Deal-Maker (and Deal Lawyer) Needs to Know About CFIUS

CFIUS is authorised by statute to review the US national security implications of “**covered transactions**”.

- Covered control transactions – Any transaction that could result in “control” of a US business by a foreign national, foreign government or foreign entity.
- Covered investments – Any transaction that would result in an acquisition by a foreign person of a non-controlling equity interest in a TID US business.
- Covered real estate transactions – Any transaction resulting in the acquisition of real property rights by a foreign person in certain airports, ports, or near specific military or government facilities listed in the regulations.

Mandatory filings to the CFIUS are required if:

- A covered transaction involves a U.S. business that produces, designs, tests, manufactures, fabricates, or develops “critical technology” that would require an export authorization to be transferred to the foreign person investor, its parent entities, or any of their 25% or greater shareholders (certain limited exceptions apply depending on the export classifications of the critical technology and country(ies) of the foreign person investor)
- A covered transaction involves a 25% or greater interest acquisition in a TID US business and a foreign government (other than from an excepted state) holds a substantial interest (49% or more) in the foreign investor

Voluntary filings:

Parties to any covered transaction have the option of submitting a voluntary filing to CFIUS, which can establish a safe harbour for the transaction to avoid the risk of future CFIUS review, even years after closing.

Whether a transaction triggers a mandatory filing or parties have decided to submit a voluntary filing, parties have the option to submit a long-form notice filing or a short-form declaration filing. The short-form filing is quicker and has no filing fee; however, it is not advisable unless the investment presents little to no concerns. The majority of filing with CFIUS are voluntary.



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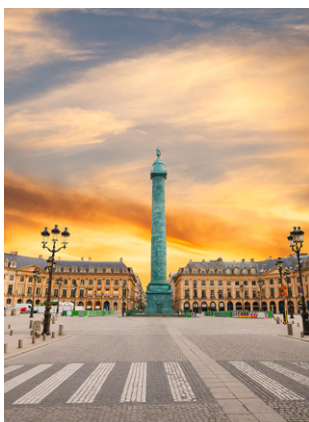
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EU

- **No direct authority** to approve or reject proposed investments; coordination role, but member states retain decision-making power (15 of 27 have national security review mechanisms in place)
- Member states are required to notify the European Commission and other states of ongoing FDI reviews, which may include a list of other states whose security or public order are deemed likely to be affected
- Other Member States have the right to comment, even if FDI filing is not required in such country. This can in practice lead to delays.



France

- **Scope** – Public policy and security, defence, media, food, agriculture, energy, water supply, health care, transport, space operations, communications, cryptology resources, critical technologies such as biotechnology, energy storage or quantum technologies.
- **Trigger** – Following transactions (i) taking control of a French company; (ii) acquisition of all or part of a branch of activity of a French company; and (iii) acquisition of more than 25% (threshold temporarily lowered to 10%) of voting rights of a French company (applicable to non-European investors only).
- **Filing mandatory?** – Yes, the transaction must not close before approval.
- **Timing** – 30 business days, extendable by 45 business days.



Germany

- **Scope** – In principle, all sectors but there are special rules for defence, IT security companies, essential infrastructure and (currently planned) a wide range of critical technologies.
- **Trigger** – Acquisition of more than 10% of voting rights for defence, IT security, essential infrastructure (e.g. electricity, telecoms, essential medicines, medicinal products, etc.) and (currently planned) a wide range of critical technologies, such as artificial intelligence (AI), automated driving or flying, industrial robots, semiconductors, IT products and components for server security, nuclear technology, quantum technology, network technologies and 3D printing components; other sectors more than 25% of voting rights.
- **Filing mandatory?** – Yes, the transaction must not close before approval, where required.
- **Timing** – Up to 2 months for Phase I and up to 6 months for Phase II.

EU



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Australia

- **Scope** – In principle, all sectors but there are special rules that apply to foreign government investors (FGIs) in specific industries, including agribusiness, critical infrastructure (businesses that hold assets such as electricity, gas, water or ports), telecommunications, critical military-use goods or intelligence technology, critical defence services, critical defence information and certain categories of land.
- **Trigger** – Acquisition of a substantial interest (20% or more) in an Australian entity, direct interest (10% or more, or in a position to control or influence) in Australian land or agribusiness, any acquisition by an FGI and “notifiable national security actions” (for which there are different percentage triggers depending on the sector).
- **Filing mandatory?** – Yes, the transaction must not close without Foreign Investment Review Board (FIRB) approval (financial and criminal penalties may apply).
- **Timing** – Deadline of 40 days (including 30 days for the Treasurer to make the decision and a further 10 days to notify the applicant of the decision). The Treasurer has powers to extend the decision period for up to 90 days.

Australia



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UK

- **Scope** – Any acquisition relating to a UK entity (or an entity carrying out activities in the UK or supplying services/goods to customers in the UK) (qualifying entity) or an asset used in connection with activities carried out in the UK or the supply of services/goods to customers in the UK (qualifying asset).
- **Trigger** – The acquisition of (i) either more than 15%, 25%, 50% or 75% of votes or shares, (ii) voting rights that enable or prevent the passage of any class of resolution, (iii) material influence over policy relating to a qualifying entity, or (iv) a right or interest in, or in relation to, a qualifying asset which enables the use of it or direct control over its use.
- **Filing mandatory?** – Yes, the transaction must not close before approval for triggers (i) to (ii) above if the acquisition relates to one of 17 key sectors (including the energy, communications and transport sectors) or it will be declared legally void. Parties are otherwise encouraged to self-assess whether voluntary notifications should be made for any other trigger (regardless of whether they relate to one of the 17 key sectors).
- **Timing** – Initial screening of mandatory or voluntary filings (30 working days); full national assessment (30 working days, extendable unilaterally by BEIS by 45 working days, further extendable by agreement with the parties).

Important: in the UK a local presence is not necessary, sales into the UK can be sufficient, depending on the sector.

UK



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Italy

- **Scope** – Energy, transport, communications, defence, national security and 5G; recently extended to “high-tech” companies (technology intensive activities), such as those dealing with data, AI and robotics.
- **Trigger** – Depends on the sector; for example, energy, transport, communications: (i) resolutions, acts or transactions leading to a change of ownership or control of the company’s assets, e.g. merger; and (ii) relevant acquisitions (defined as the ability to determine a permanent establishment of the buyer into the company).
- **Filing mandatory?** – Yes, the transaction must not close before approval.
- **Timing** – Filing 10 days from signing; review period of 30 to 45 days. The Italian government may extend the review period by requesting additional information from the parties.

Italy



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Poland

- **Scope** – Energy, defence, national security and telecommunications. Due to COVID-19, significant extension of the scope was introduced and will remain in place until 25 July 2025 to protect entities in particular in critical infrastructure, IT companies, oil & gas, food and water supply, chemicals, data storage, health care, laboratories and transport.
- **Trigger** – Direct or indirect acquisition of more than 20% of votes in the target.
- **Filing mandatory?** – Yes. If the transaction takes place before the filing is made and clearance obtained, it is null and void and the parties may be subject to penalties.
- **Timing** – 90 days, (for transactions concerning certain name entities) 30 business days for Phase 1 and 120 days for a Phase II investigation.

Poland



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Spain

- **Scope** – Physical or virtual critical infrastructures, critical technologies and dual use items, supply of essential inputs, sectors with access to sensitive information and the media.
- **Trigger** – More than 10% of the total share capital of a company.
- **Filing mandatory?** – Yes, the transaction must not close before approval.
- **Timing** – Up to six months.

Spain



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Czech Republic

- **Scope** – Infrastructure, energy, food and agriculture, transport, health care, telecoms and data, financial services, media, defence (including dual-use), and other sectors where the investment is of national security concern.
- **Trigger** – Any investment that established (i) control of at least 10% of voting rights, (ii) membership in a corporate body of the target, (iii) right of disposal of proprietary rights to property used for economic activity, or (iv) any other degree of control that allows the investor access to information, systems or technology essential for the protection of national security.
- **Filing mandatory?** – Yes, if the investment relates to one of 4 key listed sectors (defense, critical infrastructure, critical information infrastructure and dual-use items). Otherwise, the parties are encouraged to self-assess if a voluntary notification should be made. Sanctions include fines and mandatory divestment.
- **Timing** – Up to seven months, perhaps longer depending on the transaction risk.

Czech Republic



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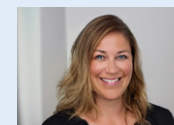
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Slovakia

- **Scope** – Foreign investments may be subject to a voluntary or mandatory screening procedure. Mandatory screening is required for critical foreign investments, which are investments that heighten the risk of negative impact on the security and public order of the Slovak Republic.
- **Trigger** – Foreign investment that allows a foreign investor to either directly or indirectly (i) acquire the target person or part of the target person, (ii) exercise effective participation in the target person, (iii) increase effective participation in the target person, (iv) exercise control in the target person, or (v) acquire the ownership right or other right to the essential assets of the target person and it is a critical foreign investment (other right means the right to use or dispose of the target person's substantial assets).
- **Filing mandatory?** – Yes, the critical foreign investment requires mandatory filing. Critical foreign investment cannot be concluded prior to the issuance of a decision on foreign investment.
- **Timing** – This depends on the complexity of the transaction. If the Ministry of Economy does not issue a decision within 130 days from the start of the screening procedure, it is presumed that the foreign investment does not have a negative impact and that the Ministry of Economy has approved the foreign investment.

Slovakia



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China

- **Scope** – (i) All types of investment (including greenfield), and (ii) defence, agricultural products, energy, major equipment manufacturing, infrastructure, transport, culture, technology and internet, financial services, key technologies, and other essential industries of national security concern. All must be critical in nature.
- **Trigger** – (i) Defence-related: any investment; (ii) other sectors: actual control by foreign investors.
- **Filing mandatory?** – Yes, the transaction must not close before approval.
- **Timing** – Preliminary Review (15 business days), General Review (30 working days) and Special Review (60 working days).



Japan

- **Scope** – Acquisitions of, investments in, loans to, the establishment of, and certain actions with respect to a Japanese entity.
- **Trigger** – Very broad thresholds; virtually any acquisition of shares, acquisition of voting rights and certain acquisitions of securities.
- **Filing mandatory?** – Yes. The transaction can be unwound if it relates to a designated industry (Core Restricted Businesses) and closes or the action is taken before approval.
- **Timing** – 30 days in principle; however, this can be shortened to two weeks or, in some cases, just four days. If an examination for national security is required, the period can be extended for up to five months.

China



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Assessing the FDI Risk of the Transaction

The following business factors, if present, would increase the risks that FDI authorities could be concerned about some or all of the covered transaction.

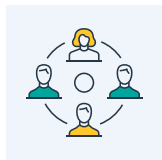
Maintaining or Collecting Personal Data

- Produce, design, test, manufacture, fabricate or develop one or more critical technologies
- Own, operate, service or key supplier to critical infrastructure (e.g. energy)
- Sole source, or one of only a few qualified sources, that directly or indirectly supplies any agency of the US government
- Involvement in the defence industry, products or technology with current or anticipated military applications
- Operations of the business involved in evolving areas of high risk, such as advanced semiconductor R&D; services/ software business that has access to other companies' data or facilities; or integral to food or medical supply chains (exacerbated by COVID-19)

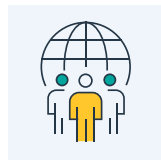
Foreign Investor Risk Factors

- Foreign investor is from a jurisdiction that is geopolitically adverse to policy
- For investors from allied countries, whether the foreign investor has material commercial relationships with countries or entities adverse to policy (e.g. business with countries subject to US sanctions), even if those relationships are lawful
- For non-Chinese investors, whether the foreign investor has a significant presence in China or business relationships with Chinese entities
- Any criminal or regulatory violations, such as export control or anticorruption violations

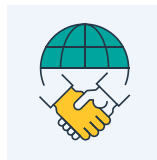
Squire Patton Boggs At a Glance.



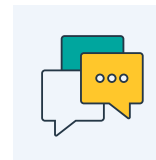
More than 1,500
lawyers across four
continents



More than 500
partners



Top 20
global legal practice based
on number of lawyers



More than 40
languages spoken



