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A LANDSCAPE SURVEY OF FOREIGN DIRECT INVESTMENT SCREENING MEASURES AND RELEVANCE FOR SINGAPORE

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Policy Report
August 2023

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Executive Summary

The benefits of foreign direct investment (FDI) are usually broad-based and reciprocal. However, FDI may be used by states to exert political or other forms of influence, even coercion, within target countries through leveraging economic influence. A number of nations in recent years have responded to this reality by recalibrating or strengthening their foreign investment screening mechanisms.

This report provides a snapshot of the current FDI regulation and policy landscape of several countries (including some ASEAN nations) striving to balance FDI-related risks and benefits. Key reported international cases of perceived foreign interference or national security incidents arising from foreign investments are then discussed. Next, the report examines the frameworks and related enforcement/application of the screening regimes of the European Union, the United States, and the United Kingdom, along with specific examples of the prohibitions or restrictions on foreign investment imposed under those regimes. As observed, all three regimes bear these hallmarks: (i) the identification of critical technologies/sectors; (ii) a unified screening process; (iii) extensive consultations conducted across industry and political sectors; (iv) cross-regulatory agency co-ordination and collaboration; (v) the use of adjustable limits, and (vi) imposition of preconditions in carrying out screening processes and arriving at decisions. Should Singapore decide to recalibrate its existing investment screening processes under sectoral regulation, a number of factors will have to be taken into account.

Introduction

Overview

In today's globalised and interconnected word, many countries are dependent on trade, financial/infrastructural assistance, and foreign direct investment (FDI). FDI is a form of transboundary investment where an investor (corporate, governmental, or individual) from "one economy establishes a lasting interest in and a significant degree of influence over an enterprise resident in another economy."[1] This could happen by way of merger, acquisition, or a joint venture. Examples of FDIs are physical investments for the long term such as setting up plants or purchasing buildings. In addition, FDI investors will normally assume controlling positions and active management roles in local target firms or joint ventures, or at the very least, have a significant amount of influence in the decision-making process. An investor who holds at least 10 per cent of a company's shares is considered to have established a significant interest by the Organisation for Economic Co-operation and Development (OECD).[2] The effects of FDI are generally considered to be positive:

> FDI is a key element in international economic integration because it creates stable and long-lasting links between economies […] an important channel for the transfer of technology between countries, promotes international trade through access to foreign markets, and can be an important vehicle for economic development.[3]

However, FDI may in some situations enable state powers to enact political coercion, for example, by translating economic strengths and advantages into political and economic influence against target countries. Furthermore, it could facilitate the transfer of technology or natural resources, or provide undesirable actors a gateway into controlling or influencing corporations supplying essential services or infrastructure. There have been cases where weaponisation of trade and FDI have served as a tool of foreign policy to advance strategic objectives, beyond economic or commercial goals.[4] "Investment programs and trade policy may be used politically" by countries "to influence either a recipient state's ability

1 "Foreign direct investment (FDI)", OECD iLibrary, 2023, https://www.oecd-ilibrary.org/finance-and-investment/foreign-direct-investment-fdi/indicator-group/english_9a523b18-en.

2 Ibid.

3 "Foreign direct investment (FDI)", OECD iLibrary, 2023, https://www.oecd-ilibrary.org/finance-and-investment/foreign-direct-investment-fdi/indicator-group/english_9a523b18-en.

4 William Alan Reinsch, "Weaponising Trade", Center for Strategic and International Studies, 2021, https://www.csis.org/analysis/weaponizing-trade.

to allocate benefits, or to allocate benefits on a sub-national level between specific and politically relevant groups."[5] These measures could create and foster economic dependency via seemingly preferential trade terms—especially for countries with vulnerable economies—triggering national security concerns.

This report explores FDI-related foreign influence risks and FDI-related measures in selected countries, and attempts to provide a snapshot of the current FDI landscape in terms of countries striving to calibrate FDI-related risks and benefits. It examines key cases of foreign interference or national security incidents arising from foreign investments. It then reviews international practices in terms of protocols, regulations, and legislations for the screening of FDI and gives examples of reactions to FDI by various stakeholders. It closes with a reflection on Singapore's position and recommends suggestions on the development of policy responses for FDI screening.

Context and Circumstances of Increasing FDI Screening

According to the 2023 United Nations Conference on Trade and Development (UNCTAD) report "The Evolution of FDI Screening Mechanisms – Key Trends and Features", since 1995, "at least 37 countries introduced a regulatory framework" for FDI "on national security grounds."[6] The main reasons for doing so appear to be streamlining separate/piecemeal protocols and processes on FDI screening, strengthening protective measures around critical/sensitive infrastructure sectors against foreign control, and increasing the transparency of these processes.[7]

The literature also indicated three possible drivers of increased attention towards FDI: (i) adversarial capital/investments; (ii) the Russia-Ukraine conflict; and (iii) the COVID-19 pandemic. The latter two are relatively recent disruptions and their potential long-term impacts on FDI policies may warrant further observation.

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5 Jos Meester and Guido Lanfranchi, "Foreign Direct Influence? Trade and Investment on the Red Sea's African Shores", Hinrich Foundation, 2021, https://www.hinrichfoundation.com/research/article/fdi/foreign-direct-influence-trade-and-investment-on-the-red-sea-s-african-shores/.

6 The United Nations Conference on Trade and Development (UNCTAD) released a publication in February 2023, when this report was in its final stages of completion. It identified the drivers of the increase in FDI policies in recent years and aligned with our observations. See Vicente Guazzini, Anastasia Leskova, and Massimo Meloni, "The Evolution of FDI Screening Mechanisms -Key Trends and Features", UNCTAD Investment Policy Monitor, February 2023, https://unctad.org/system/files/official-document/diaepcbinf2023d2_en.pdf.

7 Ibid, p. 3 – 5.

Adversarial capital (or adversarial investment) concerns foreign adversary investments in new and emerging technologies or financially vulnerable companies in sensitive industries that have yet to come under a country's national security review regime.[8] Such investments may allow foreign adversaries to control assets in sensitive industries. In March 2020, the US Department of Defense (DoD) cautioned against adversarial investments in US companies and said: "during this crisis, the [defense-industrial base] is vulnerable to adversarial capital, so we need to ensure companies can stay in business without losing their technology."[9]

The Russia-Ukraine conflict triggered the promulgation of specific FDI screening regimes in the European Union (EU), Italy, and Canada focusing on the management of national security risks and concerns engendered by FDI.[10] Additionally, the sanctions against Russia could have made some countries more cautious about the money flowing in from Russia and Russia-linked sources. Regarding COVID-19, the "exceptional economic situation" triggered by the pandemic appeared to have accelerated FDI restrictions policymaking, according to the OECD report "Investment screening in times of COVID – and beyond".[11] During the pandemic, the European Commission (EC) issued guidelines to EU member states regarding the importance of maintaining "a strong EU-wide approach to foreign investments screening in a time of public health crisis and related economic vulnerability."[12] Additionally, the US-China geopolitical rivalry has impacted FDI, with some countries reconsidering their dealings with Chinese companies, especially in the technology sphere.

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8 Farhad Jalinous and Tilman Kuhn, "Adversarial capital and COVID-19 converge to expand FDI regimes – Watch this space", White & Case, 18 September 2020, https://www.whitecase.com/insight-our-thinking/adversarial-capital-and-covid-19-converge-expand-fdi-regimes-watch-space.

9 Aaron Mehta and Valerie Insinna, "Amid pandemic, Pentagon urges 'hyper-vigilance' against foreign investment", U.S. Department of Defense, 25 March 2020, https://www.defensenews.com/coronavirus/2020/03/25/amid-pandemic-pentagon-urges-hyper-vigilance-against-foreign-investment/.

10 Vicente Guazzini, Anastasia Leskova, and Massimo Meloni, "The Evolution of FDI Screening Mechanisms - Key Trends and Features", UNCTAD Investment Policy Monitor, February 2023, p. 6, https://unctad.org/system/files/official-document/diaepcbinf2023d2_en.pdf.

11 "Investment screening in times of COVID – and beyond", OECD, 23 June 2020, p. 3, https://www.oecd.org/investment/Investment-screening-in-times-of-COVID-19-and-beyond.pdf.

12 "Coronavirus: Commission issues guidelines to protect critical European assets and technology in current crisis", European Commission, 25 March 2020, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_528.

Against this backdrop, countries have been revisiting their FDI screening regimes. While some countries have adopted laws or implemented more stringent processes for reviewing or approving FDI in certain industries, other nations, including those with restrictions and regulations, have introduced measures to facilitate or expand the scope of inbound FDI. These expansionist measures seek to augment economic and other useful benefits from this line of investment. On the other hand, the tightening of measures is arguably motivated by legitimate concerns regarding the risk of FDIs becoming a channel for economic influence. With risks and benefits involved, countries striving to maintain their economic competitiveness must recognise the importance of balancing the trade-offs FDI bring.

Notable Cases of FDI Giving Rise to National Security Concerns

FDI Projects, Investor States, and Target States

The examples below highlight international cases with a perceived risk of foreign investment translating to domestic political or economic influence, vulnerability, and dependency.

(a) In the Middle East

• In 2006, Dubai-based company Dubai Ports World (DP World) attempted to purchase British shipping company P&O. Six US ports were amongst the intended assets transferred from P&O to DP World.[13] The controversial takeover bid was eventually blocked on national security considerations, notably the potential control of key strategic port assets by DP World (owned and operated by the UAE government).[14] The DP World controversy was the turning point in foreign investment screening for national security reasons. The US House passed the Foreign Investment and National Security Act (FINSA) of 2007, a law which significantly expanded and strengthened the Committee on Foreign Investment in the United States (CFIUS). It gives the regulatory body the authority to initiate reviews of mergers, acquisitions, and takeovers which may result in foreign control, and determine whether such activities pose a risk on national security.[15]

[13] David Sanger, "Under Pressure, Dubai Company Drops Port Deal", 10 March 2006, New York Times, https://www.nytimes.com/2006/03/10/politics/under-pressure-dubai-company-drops-port-deal.html

[14] Julio Rotemberg, "The Dubai Ports World Debacle and its Aftermath", 29 August 2007, Harvard Business School,

[15] "H.R.556 - Foreign Investment and National Security Act of 2007", US Congress, Congress.gov, https://www.congress.gov/bill/110th-congress/house-bill/556

• CFIUS intervened in Japanese conglomerate SoftBank's 2018 takeover of US-based Fortress Investment Group. In compliance with CFIUS' orders, SoftBank relinquished day-to-day control of Fortress as the former implemented additional steps to monitor SoftBank's extent of direct influence over the company. SoftBank has since divested its stake in Fortress and has plans to sell Fortress to Mubadala, the Abu Dhabi sovereign wealth fund.[20] In July 2023, CFIUS undertook a review of Mubadala's planned takeover of US-based Fortress Investment Group. The planned takeover comes amidst concerns over the UAE's ties to China and its national security. As of this writing, CFIUS has not reached a decision on the review.[21]

• In 2022, the UK government investigated the proposed acquisition of UK aerospace firm Reaction Engines' shares by UAE-based Tawazun Strategic Development Fund. The UK government deemed the acquisition a potential risk to national security, as Reaction Engines develops technology with dual-use applications. An investigation was launched following concerns that sensitive intellectual property (IP) could be covertly accessed by hostile actors. A final order was issued by the UK government in September 2022 allowing for the acquisition of shares, subject to provisions designed to mitigate risks to national security.[22]

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[20] Arash Massoudi, "SoftBank waived day-to-day control of Fortress to win deal", 4 April 2018, Financial Times, https://www.ft.com/content/f7b3b356-3774-11e8-8b98-2f31af407cc8

[21] Arash Massoudi & Demetri Sevastopulo, "US security officials scrutinise Abu Dhabi's $3bn Fortress takeover", 25 July 2023, Financial Times, https://www.ft.com/content/a8f3b524-ff45-4935-96da-cc08bd32e138

[22] "Acquisition of shares in Reaction Engines Limited by Tawazun Strategic Development Fund LLC: notice of Final Order", 2 September 2022, Gov.UK, https://www.gov.uk/government/publications/acquisition-of-shares-in-reaction-engines-limited-by-tawazun-strategic-development-fund-llc/acquisition-of-shares-in-reaction-engines-limited-by-tawazun-strategic-development-fund-llc-notice-of-final-order

(b) South Stream offshore gas pipeline

The South Stream offshore gas pipeline project was intended to transport natural gas from the Russian Federation to multiple countries via the Black Sea before it was cancelled in December 2014.[23] The project posed a challenge to the EU-backed Nabucco pipeline that planned to connect the EU better to natural gas resources in the Caspian Sea.[24] The ownership configuration of the South Stream pipeline breached the EU's Third Energy Package (2009).[25] Nonetheless, Gazprom, a Russian majority state-owned multinational energy corporation, and the Russian government, allegedly attempted to persuade EU member states to overlook this and leave the pipeline project out of relevant EU regulations.[26] For instance, Bulgaria amended its energy law in April 2014 to authorise South Stream pipeline's ownership structure despite contravening the EU regulations.[27] Bulgaria eventually gave in to the counterpressure of its opposition parties and the EC.[28] Some argued that the South Stream project had various geopolitical goals, such as serving as a tool of "political and economic leverage over CEE states; consolidate[ing] European dependence on Russian energy exports; exert[ing] control over Ukraine without threatening other customers; and […] undermine[ing] the Nabucco pipeline as an alternative supply option".[29]

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23 Bulgaria, Serbia, Hungary, Slovenia, Austria, Italy, Croatia, Macedonia, Greece and Turkey. See Sean Aday, Māris Andžāns, Una Bērziņa-Čerenkova, Francesca Granelli, John-Paul Gravelines, Mils Hills, Miranda Holmstrom, Adam Klus, Irene Martinez-Sanchez, Mariita Mattiisen, Holger Molder, Yeganeh Morakabati, James Pamment, Aurel Sari, Vladimir Sazonov, Gregory Simons, and Jonathan Terra eds, Hybrid Threats: A Strategic Communications Perspective, NATO Strategic Communications Centre of Excellence (NATO StratCom COE), 8 April 2019, p. 72, https://stratcomcoe.org/pdfjs/?file=/publications/download/2nd_book_short_digi_pdf.pdf?zoom=page-fit.

24 Ibid.

25 European Commission (2 March 2011) as cited in Aday et al, "Hybrid Threats", 8 April 2019, p. 72.

26 Aday et al., "Hybrid Threats", 8 April 2019, p. 72.

27 Ibid.

28 Ibid.

29 Atlantic Council (May 2017) as cited in Aday et al., "Hybrid Threats", 8 April 2019, p. 72.

(c) The Belt and Road Initiative (BRI)

Utilising economic incentives and benefits as a dangling carrot, the BRI provides the necessary funding for the development of infrastructure in beneficiary countries. BRI enables recipient countries to enact policy decisions in infrastructure development; however some argue that this may result in the expansion of Chinese influence in the country and in the region.[30] While it is hard to gauge the effect and degree of economic, political, and social influence of China via BRI projects, a "debt trap diplomacy" arising from the BRI may force countries to align their foreign policy with Beijing given their debt obligations. Below are some examples of countries receiving Chinese investment as part of the BRI:

- Reports on Chinese investment in Sri Lanka revealed that during the 2015 elections, large payments were directed to then President Mahinda Rajapaksa's political election campaign from the Chinese building fund for Hambantota Port.[31] The inflows of Chinese investment and largesse have sparked concerns over the years regarding Chinese influence and economic leverage on the country.[32] In 2017, Hambantota port's 99-year lease was transferred to China Merchants Port Holdings Company after the Sri Lankan government was unable to repay the heavy debt owed to the Chinese government.[33] The country's recent economic crisis—allegedly caused by the economic mismanagement of the Rajapaksa government—has also led to the perception amongst Sri Lankans that Chinese "debt-trap diplomacy" was a contributing factor even though Chinese debt only accounted for 10 per cent of Sri Lanka's foreign debt.[34]

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30 James McBride, Noah Berman, and Andrew Chatzky, "China's Massive Belt and Road Initiative", Council on Foreign Relations, 2 February 2023. https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative.

31 Maria Abi-Habib, "How China Got Sri Lanka to Cough Up a Port", The New York Times, 25 June 2018, https://www.nytimes.com/2018/06/25/world/asia/china-sri-lanka-port.html.

32 Ibid.

33 Ann Scott Tyson, "Port politics: How China fits into Sri Lanka's economic crisis", The Christian Science Monitor, 19 August 2022, https://www.csmonitor.com/World/Asia-Pacific/2022/0819/Port-politics-How-China-fits-into-Sri-Lanka-s-economic-crisis.

34 R. Ramakumar, "Commentary: Sri Lankans seem to think that their economic crisis was caused by China's 'debt-trap diplomacy'", Channel News Asia, 16 April 2022, https://www.channelnewsasia.com/commentary/sri-lanka-economic-crisis-china-debt-trap-2626976.

- China’s foreign investment in the Pacific countries such as Papua New Guinea, Solomon Islands, and Fiji has also raised questions about the influence and dependencies they create. The region’s strategic location and need for economic assistance have led to a power tussle between China and the US, with both countries keenly vying for supremacy through proposed free-trade deals and economic incentives.[35]

  o While China has had a presence in Fiji for decades, it has been investing heavily in infrastructure and fishing of late, and is a significant trading partner with the Pacific Islands. This economic relationship has now deepened into the domains of law, agriculture, and security (e.g., fears of potential ownership and control of the Pacific Islands’ fisheries infrastructure).[36] Some argue that the need for resources has powered China’s engagement and influence with governments of the Pacific Islands, securing concessions and rights such as fishing, mining, and other extractions of natural resources in those countries—in return for Chinese investments, e.g., investments in mining in Papua New Guinea, investments in marine and industrial zones.[37]

  o In 2019, the Central Bank of the Solomon Islands voiced concerns over how forging “diplomatic ties with Beijing” might lead to a “debt trap”. A lawmaker leading “a bipartisan task force investigating potential ties with Beijing” argued that Beijing “had agreed to pay into the constituency development fund that had been bankrolled by Taipei—a big incentive for lawmakers to end their opposition to China.”[38] The Solomon Islands shifted its diplomatic ties from Taiwan to China in September 2019.[39] During the period following the corruption allegations and the switch in diplomatic ties favouring Taiwan over China, Malaita came to global attention with

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35 Zhang Denghua, “China’s influence as a Pacific donor”, The Interpreter, 31 October 2022, https://www.lowyinstitute.org/the-interpreter/china-s-influence-pacific-donor.

36 Jonathan Pryke, “The risks of China’s ambitions in the South Pacific”, Brookings, 20 July 2020, https://www.brookings.edu/articles/the-risks-of-chinas-ambitions-in-the-south-pacific/.

37 Josh Nicholas, “The $3bn bargain: how China dominates Pacific mining, logging and fishing”, The Guardian, 30 May 2021, https://www.theguardian.com/world/2021/may/31/the-3bn-bargain-how-china-dominates-pacific-mining-logging-and-fishing.

38 Kathrin Hille, “China lures Solomon Islands away from Taiwan”, The Financial Times, 16 September 2019, https://www.ft.com/content/139aa44c-d87a-11e9-8f9b-77216ebe1f17.

39 Ibid.

its protests in Honiara and its call for a referendum on independence.[40] Moves made by countries other than China also raised questions around potential influence. For instance, the US promised a $25 million aid to the Malaita province in 2020—an amount that was significantly higher than the international aid the province received in 2018.[41]

o Foreign direct investment in Laos mainly comprises Chinese investment. FDI inflows to Laos in 2020 originating from China was at 87 per cent.[42] The recent completion of the Vientiane–Kunming rail link has further illustrated the dependency of the Laotian government to China, with Chinese state companies constituting 70 per cent of railway ownership, while the remaining 30 per cent is owned by the Laotian government.[43] From the sale of steel and other resources, to the engineering and construction work involved, the construction of the railway has mainly benefitted Chinese firms. Furthermore, the railway connects Yunnan with the Gulf of Thailand, highlighting the strategic geo-economic importance of the area.[44] Concerns have been raised over Laos' ability to service its debt repayments to its creditors, including China.

[40] Catherine Wilson, "China-Solomon islands pact: Reading between the lines", The Interpreter, 8 June, 2022, https://www.lowyinstitute.org/the-interpreter/china-solomon-islands-pact-reading-between-lines; Patricia O'Brien, "The Deep Roots of the Solomon Islands' Ongoing Political Crisis", CSIS, 10 December 2021, https://www.csis.org/analysis/deep-roots-solomon-islands-ongoing-political-crisis; Edward Cavanough, "Solomon Islands province announces independence vote amid China tensions" , The Guardian, 2 September 2020, https://www.theguardian.com/world/2020/sep/02/solomon-islands-province-announces-independence-vote-amid-china-tensions.

[41] Joshua Mcdonald, "US Aid Pledge to Pro-Taiwan Solomon Islands Province Raises Eyebrows", The Diplomat, 23 October 2020, https://thediplomat.com/2020/10/us-aid-pledge-to-pro-taiwan-solomon-islands-province-raises-eyebrows/.

[42] "Annual Economic Report 2020", Bank of the Lao PDR, 2020, https://www.bol.gov.la/en/fileupload/06-07-2021_1625541074.pdf.

[43] Stewart Paterson, "Are China's investment projects in Laos a window into the future?", Hinrich Foundation, 8 March 2022, https://www.hinrichfoundation.com/research/article/fdi/china-investment-projects-in-laos/.

[44] Ibid.

(d) North America

• Proposed acquisitions by Canada have been challenged by the UK. The UK Competition and Markets Authority investigated the planned acquisition of British satellite company Inmarsat by Canada's Connect Bidco, in which Connect Bidco voluntarily agreed to have Inmarsat's base of operations remain in the UK.[45] UK regulators have also investigated planned acquisitions by US companies, such as the proposed acquisition of Meggitt, a UK aerospace company, by Parker-Hannifin, a US-listed company supplying aerospace and industrial components. Both companies have agreed to undertakings to mitigate national security concerns raised by the UK Competition and Markets Authority. Undertakings include notifying the UK's Ministry of Defence on issues relating to sovereign UK capabilities, as well as supply & information issues.[46]

• One of the biggest proposed acquisitions of UK companies by the US involves Nvidia's plan to acquire British-based chipmaker Arm from its previous owner SoftBank. Due to competition and national security concerns, the UK government launched an in-depth investigation into the proposed deal.[47] Due to regulatory concerns, Nvidia withdrew its planned acquisition of Arm.[48] However in July 2023, Nvidia is in talks to be the anchor investor of Arm's IPO (Initial Public Offering) in the US.[49]

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45 "UK Government Accepts Connect Bidco's Offer of Voluntary Undertakings in Relation to Inmarsat's UK-Based Operations", https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/953131/UK_Government_Accepts_Connect_Bidco_s_Offer_of_Voluntary_Undertakings_in_Relation_to_Inmarsat_s_UK-Based_Operations__1__V2.pdf

46 "Update on the proposed acquisition of Meggitt plc by Parker-Hannifin Corporation ", 19 July 2022, Gov.UK, https://www.gov.uk/government/news/update-on-the-proposed-acquisition-of-meggitt-plc-by-parker-hannifin-corporation

47 "NVIDIA / Arm merger inquiry", 8 February 2022, Gov.UK, https://www.gov.uk/cma-cases/nvidia-slash-arm-merger-inquiry

48 Mark Sweney, "Nvidia's $40bn takeover of UK chip designer Arm collapses", 8 February 2022, The Guardian, https://www.theguardian.com/business/2022/feb/08/nvidia-takeover-arm-collapses-softbank

49 Tabby Kinder, Qianer Liu, Nicholas Megaw, Kana Inagaki and Tim Bradshaw, "Nvidia in talks to be an anchor investor in Arm IPO", 12 July 2023, Financial Times, https://www.ft.com/content/4522250e-7f70-4c60-9aad-1c49f42fa47e

Foreign Investment Regulation

Countries have adjusted their foreign investment screening processes and addressed gaps in them as a means of reaping the benefits of FDI while minimising risks, such as those discussed above. The analysis below provides an account of some of these measures. It highlights countries of special interest to Singapore given their similarities (small and open economy with a multilateral approach), countries that are significant trading partners of Singapore, and the measures taken/refinements they have made.

Country/region analysis

Many countries have adopted laws or regulations regarding FDI (Cambodia, Myanmar, the Philippines, Vietnam, China, Finland, etc.). However, not all laws have increased scrutiny over FDI: some expanded the scope of allowed or introduced measures facilitating FDI (e.g., Cambodia, the Philippines) and some facilitated investment in certain areas except those that are restricted to foreign investment (e.g., Myanmar, Vietnam).

Based on the literature review, the range of sectors and activities receiving greater scrutiny include businesses and services that utilise “sensitive personal information” and technology sectors deemed strategic (examples cited include medical device manufacture, information technology products and platforms used for government purposes, and “critical supply chains”).[50]

Similarly, a review of the laws and policies of the countries listed below reveal that many countries with or without FDI-related laws either have a list of restricted industries (or functions that are closed to FDI) or have a screening, review, or approval process for certain FDI cases (e.g., Australia, Cambodia, Canada, China, Finland, India, Israel, Japan, Myanmar, Singapore, South Korea, Switzerland, Taiwan, Thailand, USA, Vietnam).

Some such restricted industries or those that require approval include critical infrastructure (e.g., China, Israel, Taiwan, USA); media and broadcasting (e.g., India, Singapore, Taiwan, Thailand); insurance (e.g., Switzerland, Vietnam); banking and finance (e.g., India, Switzerland); real estate (India, Thailand (land trading), Vietnam); and environment and/or natural resources (e.g., Cambodia, China, India, Taiwan, Vietnam).

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[50] Ibid, p. 5, 6

Some of the concerns regarding these restricted investment areas or investment requiring approval relate to national security, defence, and the protection of natural resources. There are also countries that place restrictions on foreign ownership or seek to protect nationals, sometimes though representation (e.g., Malaysia, Thailand).[51]

The chart below provides a snapshot of the measures implemented in the countries/regions analysed for this study.

Country	**Year of introduction & responsible government entity**	**Investment screening policy and scope of legislation**	**Intended outcomes of specific FDI regime (Restricting/ facilitating FDI)**
Cambodia	1994/2003 (amendment) Council for the Development of Cambodia (CDC)	The Council for the Development of Cambodia (CDC) is the penultimate decision-making organisation for approving/ disapproving foreign investment proposals. For certain investment projects, approval from the Cabinet of Ministers is necessary[52] when it involves "capital investment of USD 50 million or more; politically sensitive issues; exploration and the exploitation of mineral and natural resources; a possible negative impact on the environment; long-term strategy; and infrastructure concessions."[53] There are 24 Provincial-Municipal Investment sub-committees set up by the government to help the provinces attract investments up to US$2 million.[54]	Facilitates FDI while approval is required under certain circumstances

[51] The examples provided in parentheses in this section are not exhaustive. They are shared as reference to some of the available examples.
[52] "OECD Investment Policy Reviews: Cambodia 2018", OECD Investment Policy Reviews, 2018, https://asean.org/wp-content/uploads/2020/12/Cambodia.pdf.
[53] Ibid.
[54] Ibid.

Malaysia	2009 No central regulatory authority	Malaysia currently has only a few restrictions on FDI. In addition, there is no "central regulatory authority or legislation" governing the country's inbound FDI.[55] FDI policies are industry-specific, and investments are governed by the respective regulatory bodies.[56] The following criteria are used to generally control foreign investor involvement in various sectors: • "A restriction on equity ownership of foreign investors by way of mandating minimum or majority equity ownership to be held by either local Malaysians or bumiputera, the indigenous ethnic group in Malaysia; and a requirement for a local Malaysian or bumiputera individual to be appointed as a director on the board of directors."[57]	Restrictions concerning ownership and board representation
Myanmar	2016 Myanmar Investment Commission (MIC)	The Myanmar Investment Commission (MIC) prohibits certain investment businesses as per the Myanmar Investment Law. They are as follows: "(i) investment businesses allowed to carry out only by the Union; (ii) investment businesses that are not allowed to carry out by foreign investors; (iii) investment businesses allowed only in the form of joint venture with any citizen-owned entity or any Myanmar citizen; and (iv) investment businesses to be carried out with the approval of the relevant Ministries."[58] The list of businesses in item (ii) above include products for defence, air traffic services, radioactive materials, printed media, minerals, operating wells, production of jade or gemstones, tourism services, and small retail services.[59]	Restrictions on and approvals for foreign investment in certain areas. Promotion of investment in certain fields.

55 Yoshikazu Hasegawa, "Snapshot: foreign investment law and policy in Malaysia", Lexology, 1 Feb 2022, https://www.lexology.com/library/detail.aspx?g=1976bef1-fb31-4b7b-aa36-803a0f5d3ba7.

56 Ibid.

57 Ibid.

58 "Myanmar Investment Law", Government of the Republic of the Union of Myanmar Directorate of Investment and Company Administration Myanmar, p. 15, 2017, https://www.dica.gov.mm/sites/default/files/document-files/myanmar_investment_law_official_translation_3-1-2017.pdf.

59 Nwe Oo, "Snapshot: foreign investment law and policy in Myanmar", Lexology, 1 Feb 2022, https://www.lexology.com/library/detail.aspx?g=b3f6269c-a691-46e5-9a7f-800cde5198ec.

Philippines	1991 and 2022 Department of National Defence	In March 2022, the Government of the Philippines relaxed some of the restrictions in the (over 30 years old) Foreign Investments Act to foster more FDI.[60] The amendment allows FDI into small and medium-sized enterprises i.e., foreign equity in permitted sectors can increase up to 100 per cent. The minimum amount of capital required to establish a business by a foreigner has been reduced by 50 per cent to $100,000 on the condition that the company has a minimum of 15 local workers, and it "introduce[s] advanced technology."[61] The Public Service Act was modified, permitting complete ownership of public services such as railways, local shipping, air transport, and telecommunications by foreigners.[62]	Relaxed some of the existing FDI-related restrictions
Singapore	No significant investment laws released in recent years. No specific authority to oversee all FDI.	There is no overarching FDI policy regime or central regulatory authority.[63] FDI policies are sector based. There are some restrictions in sectors such as professional services (accounting and law), financial services and banking, real estate, domestic media, and broadcasting.[64] The government controls foreign investment in two ways: "legislative restrictions and a licensing regime."[65] This requires both foreign and domestic investors to seek approval from the relevant regulatory body.[66] Each application is typically evaluated on an individual basis, and the Singaporean government generally encourages "a consultative approach between foreign investors and regulatory bodies."[67]	Restrictions and approval processes in certain sectors

60 "Philippines relaxes rules to woo foreign investment", Reuters, 4 March 2022, https://www.reuters.com/markets/rates-bonds/philippines-relaxes-rules-woo-foreign-investment-2022-03-04/.

61 Ibid.

62 Cliff Venzon, "Philippines allows foreigners to own telcos, airlines and railways", Nikkei Asia, 22 March 2022,https://asia.nikkei.com/Economy/Philippines-allows-foreigners-to-own-telcos-airlines-and-railways.

63 Mark Tan and Nicholas Hanna., "Foreign direct investment in Singapore", Pinsent Masons, 1 Mar 2022, https://www.pinsentmasons.com/out-law/guides/singapores-foreign-investment-regime.

64 Ibid.

65 Ibid.

66 Ibid.

67 Ibid.

Thailand	1999 Foreign Business Commission & Department of Business Development (part of the Ministry of Commerce)	The Foreign Business Act (FBA) was passed in 1999 and is fairly restrictive.[68] Its annex covers three extensive lists of sectors described in Section 8 of the FBA. List one describes sectors closed to foreigners; List two is sectors open to foreigners only with approval from the Council of Ministers; List three addresses sectors where Thais are not ready to compete with foreigners and hence no FDI is allowed unless there is approval from the Foreign Business Commission (FBC).[69] The FBC consists of representatives from various Ministries as well as industry bodies.[70]	Restrictions and ownership cap to FDI in certain industries
Vietnam	2021 Ministry of Planning and Investment, Ministry of Industry and Trade	Vietnam's revised Law on Investment (LOI 2020) came into effect in 2021, replacing the previous law from 2014.[71] The LOI 2020 states that FDI is additionally subject to "Negative Lists" which consists of "Prohibited List" of 25 completely banned sectors including media and a "Conditional List" which consists of 59 industries where specific market access conditions must be satisfied before FDI is allowed.[72] LOI 2020 also introduces the National Defence and Security Review.[73] Any FDI involving projects in sensitive land areas (National Security Sensitive Area) requires approval from the Ministry of National Defence and Ministry of Public Security.	Better clarity on FDI restrictions with the introduction of separate lists

[68] "Foreign Business Act", UNCTAD, Section 8 and Annex, 1999, https://investmentpolicy.unctad.org/investment-laws/laws/40/thailand-foreign-business-act.

[69] Ibid.

[70] Ibid, Section 23.

[71] Hsiu-Hau Oh, Jonathan Lin, Vinh NhanPhan, and Thi Phoung Thao Tran, "Vietnam issues new guidance on foreign investment", Allen and Gledhill, 28 June 2021, https://www.allenandgledhill.com/vn/perspectives/articles/18840/vnkh-issues-new-guidance-on-foreign-investment.

[72] Ibid.

[73] Ibid.

Australia	2021 Foreign Investment Review Board (FIRB) and The Treasurer	The role of Australia's Foreign Investment Review Board (FIRB) is to examine FDI proposals to evaluate whether they are against Australia's national interests and security. There were some notable changes made to Australia's FDI legislation in 2021. Final decisions as whether to approve, reject, or place restrictions on the investment rest with Australia's Treasurer.[74] Australia now has a "national security test" which "provides the Treasurer with the ability to address new and emerging national security risks from foreign investment."[75] This is in addition to the existing "national interest test".[76] The FIRB has issued a sectoral guidance document listing over 20 sectors (non-exhaustive) and the specific circumstances for which either mandatory notification is required, or voluntary notification is encouraged.[77]	Review of FDI, especially those concerning national security
Canada	1985 with latest amendments in 2020 & 2021 The Investment Review division of Innovation, Science, and Economic Development Canada, the Cultural Sector Investment Review division of the Department of Canadian Heritage	The Investment Canada Act (ICA) first enacted in 1985 requires foreign investors to apply for review and demonstrate that the investment would be a "net benefit" to Canada.[78] Updated national security review guidelines were issued in March 2021 reiterating four areas of closer examination. This includes FDI by state-owned enterprises into Canada, personal data, certain sensitive technology areas, and minerals. The list of sensitive technologies would be left as non-exhaustive.[79] On the other hand, the thresholds for approval were lowered for foreign investors partially due to the negative economic impact caused by the COVID-19 pandemic. The pandemic also spurred the government's announcement that it would carefully examine any FDI into Canadian public health organisations or businesses that provide essential products and services.[80]	Review and notification requirements for certain FDI. While the threshold for FDI is lowered, there is increased FDI scrutiny in some areas.

[74] Naomi Davies, "Top FDI locations continue to tighten their screening regulations", Investment Monitor, Section on Australia, 16 December 2021, https://www.investmentmonitor.ai/analysis/top-fdi-locations-continue-to-tighten-their-screening-regulations.

[75] "National Security", Australian Government Foreign Investment Review Board, Guidance Note 8, 12 April 2022, https://firb.gov.au/national-security.

[76] Ibid.

[77] Ibid.

[78] Dominic Thérien, Erin Keogh, and Oliver Borgers, "Snapshot: foreign investment law and policy in Canada", Lexology, 23 January 2023, https://www.lexology.com/library/detail.aspx?g=06c326e0-04a2-4c52-8093-a8289770001b.

[79] Ibid.

[80] Naomi Davies, "Top FDI locations", Section on Canada, 16 December 2021.

China	2020/2021 National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM)	The Foreign Investment Law (PRC FIL 2020) became effective in January 2020.[81] It states that any transaction between one or more foreign entities with Chinese interests may be subject to a national security review.[82] In December 2020, further guidelines for evaluating foreign investments on the basis of national security were issued. A "Working Mechanism office" was set up under the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) to conduct these evaluations.[83] The Negative List (for access to the Chinese market) lists the sectors that are restricted or closed to FDI. This list is consistently getting shorter, in an effort by the PRC government to encourage more FDI in more sectors.[84] However, there have been other measures to tighten restrictions on FDI specifically from certain nations. In September 2020, MOFCOM released the "Provisions on the Unreliable Entity List" which states that a "foreign individual or entity will be added to the list if they are deemed to have endangered the national sovereignty, security, or development interests of China."[85]	Restrictions to and review of FDI in certain industries

81 Global Law Office, "Snapshot: foreign investment law and policy in China", Lexology, 23 January 2023, https://www.lexology.com/library/detail.aspx?g=8d9f2ea0-4000-4242-b2f0-21712db83bf0.

82 Ibid.

83 Ibid.

84 Deacons, "China speeds up the making of 2020 Negative List and Catalogue of Encouraged Industries for Foreign Investment", Lexology, 7 April 2020, https://www.lexology.com/library/detail.aspx?g=7fb82d68-a4f5-4f51-a4b5-e59eefe440eb.

85 Naomi Davies, "Top FDI locations", Section on China, 16 December 2021,.

Finland	2012/ 2020 (amendment) Ministry of Economic Affairs and Employment	Finland's Screening of Foreign Corporate Acquisitions ACT (2012), amended in 2020, informs the foreign investment screening processes in Finland. The Act seeks to control foreign investment in cases where it clashes with the key national interests of "(i) national defence; (ii) security of supply; and (iii) functions fundamental to society."[86] The 2020 amendment of the Act (2020) improved its alignment with the EU regulation on the issue and further unpacked the definition of a foreign owner who might be subjected to the screening.[87] The amendments also introduced provisions that permit the Ministry of Economic Affairs and Employment "to set conditions on foreign owners in an approving decision, regulating inadmissibility of matters and attempts to circumvent the Act."[88] In 2020, Finland introduced a new legislation guarding the evaluation process of foreign purchase of "certain land and properties of importance to the total defence."[89]	Controls for FDI in certain areas

86 Screening of Foreign Corporate Acquisitions Section 1 and Government of Finland Homepage as cited in Jonas Hallberg, "Foreign Investment Screening in Finland, Norway, Sweden and Denmark", in S. Hindeland and A. Moberg (Eds.) YSEC Yearbook of Socio-Economic Constitutions book services, volume 2020, 29 May 2020, p. 212, https://link.springer.com/chapter/10.1007/16495_2020_17#Fn9.

87 "…securing military national defence, functions vital to society, national security and foreign and security policy objectives, and safeguarding public order and security in accordance with Articles 52 and 65 of the Treaty on the Functioning of the European Union, if there is a genuine and sufficiently serious threat to a fundamental interest of society" and "…any person natural or legal not domiciled within the EU and EFTA and any person domiciled in those countries, but in which a foreign person controls at least 10% votes or exercises similar influence. Foreign acquisition thresholds are set at 10%, one third and 50% of votes in a Finish business". See "Finland Amends its FDI screening regime", UNCTAD Investment Policy Hub, 11 October 2020, https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3637/finland-amends-its-fdi-screening-regime.

88 "Finland Amends its FDI screening regime", UNCTAD Investment Policy Hub, 11 October 2020, https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3637/finland-amends-its-fdi-screening-regime.

89 Jonas Hallberg, "Foreign Investment Screening", 2020, p. 213.

India	Latest changes in 2020/ concerned ministries and departments with Department for Promotion of Industry and Internal Trade (DPITT) as nodal department	FDI into India comes via two ways, either automatic approval or specific industries requiring prior authorisation or, in the case of defence, broadcasting and telecommunications, and security clearance.[90] Certain sectors are completely closed to FDI such as tobacco, gambling, and some real estate.[91] April 2020 saw the addition of new regulations specifically for India's neighbouring countries (China, Pakistan, Bangladesh etc.), whereby all investments require approval, irrespective of sector.[92] However, later in 2020, there was loosening of regulations governing FDI for the telecom services industry (except for neighbouring countries) and in March 2021, the FDI cap for insurance companies was raised.[93]	Mixed bag of loosening and tightening of FDI regulations (depending on the country)
Israel	2019	Israel still does not have a consolidated FDI screening legislation, hence there are no FDI prohibitions across any sector.[94] However, there are some sector-specific FDI regulations covering real estate, government tenders, communications, natural gas, electricity, financial, insurance, provident funds, banking, and credit.[95] In 2019, the Israeli Government set up an advisory committee to review implications of FDI on national security.[96] The sectors to be reviewed included finance, communications, infrastructures, transportation, and energy.[97]	Encouraging towards FDI – no particular prohibitions, but there are sector specific regulations

[90] Naomi Davies, "Top FDI locations", Section on India, 16 December 2021.
[91] Ibid.
[92] Ibid.
[93] Ibid.
[94] Adi Wizman and Idan Arnon, "The Foreign Investment Regulation Review: Israel", The Law Reviews, https://thelawreviews.co.uk/title/the-foreign-investment-regulation-review/israel.
[95] Ibid.
[96] "Government establishes a committee to evaluate national security implications of foreign investment", UNCTAD Investment Policy Hub, 30 Oct 2019, https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3426/israel-government-establishes-a-committee-to-evaluate-national-security-implications-of-foreign-investment.
[97] Ibid.

Japan	2020 The Ministry of Finance	Amongst the countries in the OECD, Japan has the lowest FDI in proportion to GDP. This is not due to strict FDI screening or legislation, but rather business practices.[98] To address this, in June 2021, the Japanese government introduced a three-pronged "'Strategy for Promoting Foreign Direct Investment in Japan', which set a new target of doubling the FDI stocks to ¥80 trillion by 2030."[99] This strategy includes fostering public-private partnerships, innovations, and addressing global environmental changes.[100] The Foreign Exchange and Foreign Trade Act (FEFTA)[101] covers FDI screening regulations. During the pandemic, however, there were significant amendments made to the Act.[102] The amendments covered increased FDI restrictions in some sectors while still allowing flexibility. These sectors include those critical for national security, public order and safety, or smooth management of the Japanese economy. Significantly, as regards foreign ownership of companies in protected/high security risk sectors, the threshold percentage requiring advance notification of the government has been lowered from 10 per cent to 1 percent.[103] These sectors include the manufacturing of weapons, satellite, rockets, nuclear plants, and semiconductor devices.[104]	Active promotion of FDI with aggressive targets but strong restrictions added for approvals for foreign investment in certain protected sectors due to national security

98 "2021 Investment Climate Statements: Japan", US Department of State, https://www.state.gov/reports/2021-investment-climate-statements/japan/.

99 Dai Iwasaki and Yojiro Arai, "Snapshot: foreign investment law and policy in Japan", Lexology, 23 January 2023, https://www.lexology.com/library/detail.aspx?g=dc6b7f73-0da0-4f3c-8b73-f021f82c652c.

100 Ibid.

101 "Foreign Exchange and Foreign Trade Act", Ministry of Finance Japan, https://www.mof.go.jp/english/policy/international_policy/fdi/FEFTA.pdf.

102 "Foreign direct investment in Japan", Pinsent Masons, https://www.pinsentmasons.com/out-law/guides/foreign-direct-investment-in-japan.

103 Dai Iwasaki and Yojiro Arai, "Snapshot foreign investment law and policy in Japan", 23 January 2023.

104 Ibid.

South Korea	2022 Ministry of Trade, Industry and Energy (MOTIE)	The Foreign Investment Promotion Act (FIPA) governs FDI into Korea, under which 61 sectors are completely off-limits for foreigners and 30 sectors are open under certain conditions.[105] FDI is defined by the Ministry of Trade, Industry and Energy (MOTIE) as an investment of at least KRW 100 million and being 10 per cent or more of the total amount.[106] There is an extensive list of business categories where foreign investment is either entirely banned or there are investment ratio caps.[107] If MOTIE determines an FDI represents a national security risk, it may prohibit the FDI or order transfer of the stock to a local company.[108] The Korean government enacted the National Advanced Strategic Industries Act (NASIA),[109] which strengthens existing FDI regulations for industries and technology considered strategically important. This follows the Korean government's plan for technology protection which was published in December 2021 subsequent to industrial technology leaks which occurred in competitive industries such as semiconductors.[110]	

105 "Definition of Foreign Direct Investment (FDI)", Invest Korea, https://www.investkorea.org/ik-en/cntnts/i-333/web.do?clickArea=enmain00014.

106 Ibid.

107 Ibid.

108 Joo Hyoung Jang, Kyunghun Kim, Rieu Kim, and Youjin Hwang, "Snapshot: foreign investment law and policy in Korea", Lexology, 23 January 2023, https://www.lexology.com/library/detail.aspx?g=754bd6fd-5078-462d-b5a9-f6b79d01435c.

109 "National High-Tech Strategic Industries", The Legal 500, https://www.legal500.com/developments/thought-leadership/korea-implements-new-act-on-special-measures-for-strengthening-and-protecting-competitiveness-of-national-high-tech-strategic-industries.

110 Ibid.

Sweden		The Protective Security Act and a Protective Security Ordinance are the pillars of screening in Sweden, although they are not necessarily "investment screening" measures.[111] They seek to safeguard information and activities that are critical to Sweden's security from "espionage, sabotage, terrorist offences and certain other threats."[112] The Protective Security tackles cases concerning business operations involving crucial information for Sweden's security and "public procurement and public building contracts."[113] The Protective Security Ordinance demands a "security-sensitive business" owner to file a document to the Swedish Security Service or Swedish Armed Forces prior to selling the company.[114] The acquisition of the company in discussion does not require an approval.[115]	Safeguards information and activities concerning security
Switzerland	Expected to be enacted in 2023	There is currently no formal screening mechanism for FDI into Switzerland.[116] Nonetheless, certain businesses under state monopolies are subject to restrictions, including "certain types of public transportation, telecommunications, postal services, alcohol and spirits, aerospace and defence, certain types of insurance and banking services, and the trade in salt."[117] In May 2022, Switzerland's Federal Council began a consultation on the draft 'Federal Act on the Screening of Foreign Investment'. The legislation aims to "prevent threats to public order and security posed by foreign investors acquiring Swiss companies."[118] The consultation concluded on 9 September 2022.[119]	No formal screening mechanism but FDI restrictions in certain sectors

[111] According to Hallberg the Protective Security Act is not necessarily a mechanism to screen investments while the ordinance "complements the act". See Jonas Hallberg, "Foreign Investment Screening",, 2020, p. 220.
[112] "Protective Security", Swedish Security Service, 2022, https://www.sakerhetspolisen.se/ovriga-sidor/other-languages/english-engelska/what-we-do/protective-security.html. See also Hallberg, 2020, p. 220-224.
[113] Jonas Hallberg, "Foreign Investment Screening", 2020, p. 220.
[114] Protective Security Ordinance (Sweden and The Protective Security Act, 2020. Chapter 2, para. 9) as cited in Jonas Hallberg, "Foreign Investment Screening", 2020, p. 220.
[115] Jonas Hallberg, "Foreign Investment Screening", 2020, p. 221.
[116] "2022 Investment Climate Statements: Switzerland and Liechtenstein", US Department of State, https://www.state.gov/reports/2022-investment-climate-statements/switzerland-and-liechtenstein/.
[117] Ibid.
[118] "Federal Council initiates consultation on legislation to screen foreign investment", The Federal Council, Swiss Government, 18 May 2022, https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-88884.html.
[119] Ibid.

Taiwan	The Ministry of Economic Affairs Department of Investment Services	Taiwan has a detailed foreign investment screening process with regulations and a "negative list for investment by Foreign Nationals" in place.[120] The list prohibits foreign and overseas Chinese investment into organisations that may have repercussions for "national security, public order, good customs and practices, or national health and those that are prohibited by law."[121] There are multiple regulations with references to foreign investment and trade in different areas.[122]	Restrictions to FDI in certain areas

[120] The 2018 list is available at: http://www.moeaic.gov.tw/download-file.jsp?do=BP&id=ZYi4SMROrBA=.

[121] "Overseas Chinese and Foreign Investment ", Invest Taiwan, https://investtaiwan.nat.gov.tw/showPageengInvestmentStatus01?lang=eng&search=InvestmentStatus01. See also "2021 Investment Climate Statements: Taiwan", U.S. Department of State, https://www.state.gov/reports/2021-investment-climate-statements/taiwan/.

[122] Some such regulations can be accessed via Invest Taiwan: https://investtaiwan.nat.gov.tw/showPageeng10310031?lang=eng&search=10310031.

United Kingdom	2021 Investment Security Unit (Department of Business, Energy, and Industrial Strategy)	The National Security and Investment Act 2021 (NSIA) became operational on 4 January 2022.[123] NSIA provides reviewing and intervention guidelines to the UK government in respect of mergers and acquisitions where national security issues are of concern.[124] The Investment Security Unit (ISU)—part of the Department of Business, Energy and Industrial Strategy (BEIS)—is responsible for administering the NSIA, and the UK Secretary of State has final decision-making authority.[125] The NSIA gives the government powers to "block, impose conditions to, delay the closing of, or unwind transactions in 17 key sectors."[126] The NSIA covers transactions that (i) provide acquirers control of UK entities or (ii) provide acquirers control of foreign entities carrying on business within the UK or that supply goods and services within the UK, even if such entities do not own any assets in the UK.[127] It employs a dual mechanism of "mandatory and voluntary notifications."[128] A mandatory notification is triggered when a transaction to which the NSIA applies to concerns any of these key sectors, and clearance from the Secretary of State is required.[129] Voluntary notifications are relevant if transaction parties notice defined "trigger events" that may encompass matters touching on national security.[130]	

[123] Marc Israel and Kate Kelliher, "UK FDI Year in Review: a look at the first year of the National Security and Investment Act", White & Case, 30 January 2023, https://www.whitecase.com/insight-alert/uk-fdi-year-review-look-first-year-national-security-and-investment-act.

[124] "Guidance: National Security and Investment Act: details of the 17 types of notifiable acquisitions", UK Government, 20 July 2022, https://www.gov.uk/government/publications/national-security-and-investment-act-guidance-on-notifiable-acquisitions/national-security-and-investment-act-guidance-on-notifiable-acquisitions.

[125] Marc Israel and Kate Kelliher, "UK FDI Year in Review", 30 January 2023.

[126] "Foreign direct investment - Global trends and developments", Bryan Cave Leighton Pasiner, 17 October 2022, https://www.bclplaw.com/en-US/events-insights-news/foreign-direct-investment-global-trends-and-developments.html.

[127] United Kingdom Parliament, "National Security and Investments Act 2021", Sections 8 and 7(3), 4 January 2022, https://www.legislation.gov.uk/ukpga/2021/25/contents/enacted

[128] "Foreign direct investment – Global trends and developments", Bryan Cave Leighton Pasiner, 17 October 2022, https://www.bclplaw.com/en-US/events-insights-news/foreign-direct-investment-global-trends-and-developments.html.

[129] Ibid.

[130] Ibid.

USA	2021 The Committee on Foreign Investment in the United States (CFIUS)	The Foreign Investment Risk Review Modernization Act (FIRRMA) was passed in 2018. The Act strengthened the CFIUS mandate in order to better manage national security issues.[131] The Act broadened the range of FDI transactions that would be subject to CFIUS' assessment to include even "non-controlling covered investments in TID US businesses (businesses involved in critical technologies, critical infrastructure, and/or maintaining and collecting personal data)."[132] Interestingly, threats to US national security are not limited to any specific categories since "national security" has not been formally defined, giving CFIUS sufficient leeway for interpretation.[133] CFIUS analyses FDI transactions with two criteria: vulnerability and threat to see if and the extent to which individual transactions could compromise national security and resulting decisions cannot be challenged in court.[134] Investors from the Five Eyes partnership are exempt from CFIUS' review of non-controlling covered investments.[135] Significant updates to the Act were made in 2021, and FDI transactions from China, Cuba, Iran, North Korea, Russia, and Hong Kong are now subject to additional prohibitions.[136]	Restrictions to and/or filing requirements for FDI in certain industries. Australia, Canada, and UK have some exemptions.

[131] Naomi Davies, "Top FDI locations", Section on US, 16 December 2021.
[132] Ibid.
[133] Chase Kaniecki et al., "Snapshot: foreign investment law and policy in USA", 23 January 2023.
[134] Naomi Davies, "Top FDI locations", Section on US, 16 December 2021.
[135] Ibid.
[136] Ibid.

FDI regimes of the EU, US, and UK

This section of the report focuses on the screening mechanisms or measures put in place by the EU, the US, and the UK. These jurisdictions were chosen given that their FDI screening regimes are the currently most structured, transparent, comprehensive, and have accessible outcomes of enforcement or application.

(a) The European Union

The EU has observed a distinct change in investor profiles and investment patterns such as higher number of non-OECD investors, some with government backing or direction, whose motivations are not always purely commercial.[137] The EC released a "Communication on Welcoming Foreign Direct Investment while Protecting Essential Interests" in September 2017, setting down at first instance a proposal for an EU FDI screening protocol.[138] While the Communication noted the significant economic and broader societal benefits generated by FDI, it also highlighted risks to security or public order presented by foreign investors (especially state-owned or controlled entities).[139] This is particularly relevant where such foreign investors may have an agenda of having authority over or interfering in European companies' operations concerning areas such as critical infrastructure, and sensitive technologies and information.[140]

As a means of addressing these risks as well as promoting more coordinated cooperation among member states for improved inspection of FDI, the EC published a proposal for a FDI screening framework for the EU.[141] By October 2022, this framework was in full operation.[142] What must be noted is that this framework does not institute a pan-EU screening process, but prescribes minimum requirements for member states to adopt and a system for coordinated reviews.[143]

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137 "First Annual Report on the screening of foreign direct investments into the Union", European Commission, 23 November 2021),.https://trade.ec.europa.eu/doclib/docs/2021/november/tradoc_159935.pdf.

138 "Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on Welcoming Foreign Direct Investment while Protecting Essential Interests: COM/2017/0494 final", EUR-Lex, 13 September 2017, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0494.

139 Ibid.

140 Ibid.

141 "Proposal for a Regulation of the European Parliament and of the council establishing a framework for screening of foreign direct investments into the European Union, COM(2017) 487 final", EUR-Lex, 13 September 2017, https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2017)487&lang=en.

142 "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, OJ L 79 I/1", EUR-Lex, https://eur-lex.europa.eu/eli/reg/2019/452/oj.

143 Ibid, Article 3 and Article 6.

Screening/Enforcement

Below are the salient facts and figures as regards the operation of the EU FDI screening mechanism, gleaned from the second annual report on FDI screening released in September 2022:[144]

i. More than 1,500 requests for authorisation and ex-officio cases, close to 30 per cent of which underwent formal screening;[145]

ii. 73 per cent of formally-screened cases received unconditional authorisation;[146]

iii. 23 per cent of cases were authorised conditionally upon mitigating actions and measures from investing parties before approval;[147]

iv. 1 per cent of screened cases were blocked;[148]

v. In less than 3 per cent of transactions did the EC give an opinion;[149] and

vi. the US, the UK, China, the Cayman Islands, and Canada were the top five countries for ultimate investor notifications.[150]

In undertaking risk assessments, the origin of investors continues to be a key consideration.

- Increasingly, Germany has made or threatened to make prohibitions on investments with origins from China or Russia. In late 2022, the Federal Ministry for Economic Affairs and Climate Action prohibited the acquisition of Dortmund-based semiconductor manufacturer Elmos by the Swedish subsidiary of China-based Sai Microelectronics, as well as Bavarian company ERS Electronic GmbH, which was undergoing acquisition by "an undisclosed Chinese investor."[151] The blocked acquisitions were attributed

[144] "Report from the Commission to the European Parliament and the Council: Second Annual Report on the screening of foreign direct investments into the Union", European Commission, 1 September 2022, p 11 – 13, https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2022)433&lang=en.
[145] Ibid, p.11.
[146] Ibid, p.12.
[147] Ibid.
[148] Ibid.
[149] Ibid, p. 13.
[150] Ibid, p.18.
[151] Valerio Fabbri, "China is caught off guard as Germany refuses to "byte" its bait", Geopolitica.info, 11 December 2022, https://www.geopolitica.info/china-germany-xi-scholz-business-investments/.

to "a broader shift" in the treatment of Chinese investments by Germany, as well as "a change in perception, underpinned by a new geopolitical situation, in the wake of Russia's invasion of Ukraine and the changes in the German government."[152]

- To date, Italy has prohibited four deals that involved Chinese investors.[153] It also ordered the unwinding of a transaction regarding a 75 per cent stake acquisition of Italian dual-use drone manufacturer Alpi by a Chinese company (for which the latter paid 90 times the stake's value), three years post-deal closing.[154] The Italian tax police "alleged a complex and opaque web of corporate holdings" that concealed "the true identity of the new owner of 75% of the company."[155] By such time, the Chinese company would in all probability have had access to Alpi's technology.

- In its report, the EC reminded EU member states to exercise even more vigilance in screening Russian and Belarussian investments for risks to EU security and public order, against the backdrop of the ongoing Russia-Ukraine conflict.[156]

However, a recent French case suggests that investor origin may only be one aspect of a whole range of considerations. In December 2020, French authorities blocked the acquisition of French photo-sensor imaging technology company Photonis by US company Teledyne.[157] Teledyne is engaged in the business of electronics for defence and aerospace

[152] Seth O'Farrell, "Germany changes tack on Chinese investors", fDi Intelligence, 5 December 2022, https://www.fdiintelligence.com/content/news/germany-changes-tack-on-chinese-investors-81816.

[153] Tilman Kuhn, Orion Berg, Marc Israel, and Kate Kelliher, "The EU Releases its Second Annual FDI report showing increased momentum in FDI regulation and screening in the EU27", White & Case, 7 September 2022, https://www.whitecase.com/insight-alert/eu-releases-its-second-annual-fdi-report-showing-increased-momentum-fdi-regulation.

[154] Ibid. Regarding the unwinding of the Italian deal, 2018, Mars, a company incorporated in Hong Kong, acquired a 75 percent stake in dual-use Italian drone manufacturer Alpi Aviation (which supplies Italy's military). At that time, there was no intervention by the Italian government, as Mars appeared to be a normal commercial outfit.

[155] "China linked to takeover of Italian drone plant" BBC, 2 September 2021, https://www.bbc.com/news/world-europe-58426878

[156] "Report from the Commission to the European Parliament and the Council, , Second Annual Report on the screening of foreign direct investments into the Union", European Commission, 1 September 2022, p. 20, https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2022)433&lang=en.

[157] Nicola Bonucci, Camille Paulhac, Randall V. Johnston, and Quinn Dang, "French Authorities Block U.S. Acquisition of French Company", Paul Hastings, 13 January 2021, https://www.paulhastings.com/insights/client-alerts/french-authorities-block-u-s-acquisition-of-french-company

capabilities.[158] The fact that Photonis is the exclusive supplier of night vision imaging equipment to the French military is noteworthy.[159] French authorities prohibited the acquisition on the basis of "national strategic interests" and the need to secure "French economic and industrial defense sovereignty."[160] This was despite undertakings by Teledyne to put safeguards in place to mollify the concerns of the French authorities.[161]

In another recent case, the Danish Business Authority had prohibited the acquisition of NKT Photonics, a fibre laser manufacturer based in Copenhagen, by the European subsidiary of Japan's Hamamatsu Photonics.[162] This transpired even after relevant authorities in the US, UK, and Germany had permitted the acquisition of NKT subsidiaries in their jurisdictions.[163] The Danish Business Authority stated that the prohibition was in line with the Danish Investment Screening Act, which provides that foreign investments can be blocked if they are considered a threat to national security or public order.[164] However, no specific reason was given for the prohibition.[165]

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[158] "About Us", Teledyne Technologies, https://www.teledyne.com/who-we-are/about-us

[159] Nicola Bonucci, Camille Paulhac, Randall V. Johnston, and Quinn Dang, "French Authorities Block U.S. Acquisition of French Company", 13 January 2021

[160] Ibid.

[161] Ibid.

[162] Kaori Kaneko and Chang-Ran Kim, "Japan's Hamamatsu Photonics say Denmark denies approval for NKT Photonics acquisition", 8 May 2023, https://www.reuters.com/markets/deals/japans-hamamatsu-photonics-says-denmark-denies-approval-nkt-photonics-2023-05-08/

[163] Ibid.

[164] "Danish government blocks Hamamatsu acquisition of NKT Photonics", Optics.org, 3 May 2023, https://optics.org/news/14/4/49

[165] Ibid.

(b) United States

The Committee on Foreign Investment in the United States (CFIUS) is an inter-agency effort established for the purpose of reviewing specific transactions involving foreign merger or acquisition of US business entities, for any implications on US national security presented by such transactions.[166] If CFIUS determines that there are national security concerns, it may take measures to mitigate those concerns by working with the parties involved in the transaction.[167] In certain instances, CFIUS may even make the recommendation that the US President impede or suspend a transaction.[168] CFIUS carries out its reviewing mandate while balancing the need of the US to maintain an open climate for foreign investment.

New legislation in the form of the Foreign Investment Risk Review and Modernization Act (FIRRMA) extended the range of transactions coming within the Committee's purview.[170] CFIUS also has the "authority to examine the national security implications of a foreign acquirer's non-controlling investments in U.S. businesses that deal with critical infrastructure, critical technology, or the personal data of U.S. citizens."[171] FIRRMA furthered empowered CFIUS to asses real estate transactions that involve "air or maritime ports" or those that are "in close proximity to sensitive U.S. government facilities."[172]

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166 "Committee on Foreign Investment in the United States: Treasury Should Coordinate Assessments of Resources Needed to Address Increased Workload", U.S. Government Accountability Office, 14 February 2018, https://www.gao.gov/products/gao-18-249.

167 Ibid.

168 Ibid.

169 Ibid.

170 Judith Alison Lee, Jose Fernandez, and Stephanie Connor, "CFIUS Developments: Notable Cases and Key Trends", Gibson, Dunn & Crutcher LLP, 24 April 2019, https://www.gibsondunn.com/cfius-developments-notable-cases-and-key-trends/.

171 Ibid.

172 Ibid.

Screening/Enforcement

CFIUS has forced divestitures of certain foreign investments because of cybersecurity and data privacy “concerns regarding cybersecurity or access to sensitive personal data”:[173]

• Broadcom/Qualcomm: In 2018, under recommendation from CFIUS, then-US President Donald Trump ordered the blocking of US company Qualcomm’s acquisition by Singapore-based microchip manufacturer Broadcom for reasons of national security, and in relation to risks posed by Broadcom due to its connections with “third party foreign entities”. There were concerns that if the acquisition took place, it would give China an advantage in developing mobile communications technology.[174]

• Kunlun/Grindr: In 2019, the Committee issued an order to Chinese technology company Beijing Kunlun Tech Co. Ltd. (Kunlun Tech) to divest its shareholding in Grindr LLC, a dating application with a large LGBTQ user base.[175] In 2016, Kunlun Tech had bought a stake of around 60 per cent in the company. By January 2018, it had acquired 100 per cent shareholding of Grindr.[176] Some observed that the divestment order was triggered by “concerns over Kunlun’s access” to highly personal information from Grindr users—including whereabouts, texts, sexual behaviours, and HIV data.[177]

• iCarbonX/PatientsLikeMe: Following a review by CFIUS, Chinese company iCarbonX was forced to sell off its major shareholding in PatientsLikeMe.[178] Close to 700,000 users of PatientsLikeMe use this online resource to log personal accounts of their health conditions. PatientsLikeMe is partnered by large pharmaceutical companies and non-profit health organisations for reasons of locating clinical research subjects.[179] In 2017, PatientsLikeMe sold a majority stake to iCarbonX with the intention of merging the Chinese company’s AI technology capabilities with PatientsLikeMe’s user databases, to increase healthcare effectiveness.[180]

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173 Ibid.

174 “Trump blocks Singapore-based Broadcom’s takeover of Qualcomm, citing national security concerns”, The Straits Times, 13 March 2018, https://www.straitstimes.com/business/trump-signs-order-prohibiting-broadcom-takeover-of-qualcomm.

175 Sarah Bauerle Danzman and Geoffrey Gertz, ”Why is the U.S. forcing a Chinese company to sell the gay dating app Grindr?”, The Washington Post, 3 April 2019, https://www.washingtonpost.com/politics/2019/04/03/why-is-us-is-forcing-chinese-company-sell-gay-dating-app-grindr/.

176 Ibid.

177 Judith Alison Lee et al., “CFIUS Developments”, 24 April 2019,

178 Christina Farr and Ari Levy, “The Trump administration is forcing this health start-up that took Chinese money into a fire sale”, CNBC, 4 April 2019, https://www.cnbc.com/2019/04/04/cfius-forces-patientslikeme-into-fire-sale-booting-chinese-investor.html.

179 Judith Alison Lee et al., “CFIUS Developments”, 24 April 2019.

180 Ibid.

• In 2020, the Trump administration ordered the divestment by Beijing Shiji Information Technology, a Chinese company, of US cloud-based hotel management software company StayNTouch due to national security concerns.[181] There appeared to be "'credible evidence' that Beijing Shiji Information Technology and its Hong Kong subsidiary might take action that threatens to impair the national security of the United States'."[182]

(c) United Kingdom

The National Security and Investment Act 2021 (NSIA) became operational on 4 January 2022 and in just over a year, began featuring frequently in investment transaction processes.[183] NSIA provides reviewing and intervention guidelines to the UK government in respect of mergers and acquisitions where national security issues arise.[184] The Investment Security Unit (ISU)—part of the Department of Business, Energy and Industrial Strategy (BEIS)—is responsible for administering the NSIA, and the UK Secretary of State has final decision-making authority.[185] The NSIA gives the government powers to "block, impose conditions to, delay the closing of, or unwind transactions in 17 key sectors. These include communications, defence, data infrastructure, energy, transport, artificial intelligence, computing hardware and robotics."[186]

The NSIA covers transactions that (i) provide acquirers control of UK entities, or (ii) provide acquirers control of foreign entities carrying on business within the UK or that supply goods and services within the UK, even if such entities do not own any assets in the UK.[187]

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[181] Ana Swanson, "Trump Administration Blocks Chinese Acquisition of Hotel Software Company", The New York Times, 6 March 2020, https://www.nytimes.com/2020/03/06/business/economy/trump-administration-blocks-chinese-acquisition-cfius.html.

[182] Ibid.

[183] Marc Israel and Kate Kelliher, "UK FDI Year in Review: a look at the first year of the National Security and Investment Act", White & Case, 30 January 2023, https://www.whitecase.com/insight-alert/uk-fdi-year-review-look-first-year-national-security-and-investment-act.

[184] "Guidance: National Security and Investment Act: details of the 17 types of notifiable acquisitions", UK Government, 20 July 2022, https://www.gov.uk/government/publications/national-security-and-investment-act-guidance-on-notifiable-acquisitions/national-security-and-investment-act-guidance-on-notifiable-acquisitions.

[185] Marc Israel and Kate Kelliher, "UK FDI Year in Review",30 January 2023.

[186] "Foreign direct investment – Global trends and developments", Bryan Cave Leighton Paisner, 17 October 2022, https://www.bclplaw.com/en-US/events-insights-news/foreign-direct-investment-global-trends-and-developments.html.

[187] United Kingdom Parliament, "National Security and Investments Act 2021", Sections 8 and 7(3), 4 January 2022, https://www.legislation.gov.uk/ukpga/2021/25/contents/enacted.

The NSIA envisages a dual mechanism of "mandatory and voluntary notifications."[188] The requirement of mandatory notifications is triggered when a transaction to which the NSIA applies to concerns any of the 17 key sectors, and clearance from the Secretary of State is required.[189] Voluntary notifications are relevant where transaction parties notice defined "trigger events" that may encompass matters touching on national security.[190]

Screening/Enforcement

In the first year of the NSIA's operation, a number of prohibitions were meted out and most were in respect of deals involving UK entities and Chinese or Hong Kong companies:[191]

• The University of Manchester and Beijing Vision Technology Company had a licensing agreement where the latter would be licensing IP of the former for commercial purposes.[192] The IP concerned in this case was "vision sensing technology" but as the subject of the license was "dual-use" in nature, it was deemed that transfer of the IP to the licensee would present risks of this technology being used to develop "defence or technological capabilities" that would pose national security risks to the UK.[193]

• Pulsic Limited was set to be fully acquired by the Hong Kong company Super Orange HK Holding Limited,[194] where the latter had intended to buy out all of Pulsic's share capital.[195] As this would have effectively given Super Orange all of Pulsic's proprietary technical know-how, methods, and IP in respect of software for developing "electronic design automation (EDA) products" for manufacturing dual-use integrated circuits, this was deemed to present a national security risk.[196]

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[188] "Foreign direct investment - Global trends and developments", Bryan Cave Leighton Pasiner, 17 October 2022, https://www.bclplaw.com/en-US/events-insights-news/foreign-direct-investment-global-trends-and-developments.html.

[189] Ibid.

[190] Ibid.

[191] Marc Israel and Kate Kelliher, "UK FDI Year in Review",30 January 2023.

[192] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 20 July 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092802/aquisition-scamp5-scamp7-know-how-final-order-notice-20220720.pdf.

[193] Ibid.

[194] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 17 August 2022, https://www.gov.uk/government/publications/acquisition-of-pulsic-ltd-by-super-orange-hk-holding-ltd-notice-of-final-order/acquisition-of-pulsic-ltd-by-super-orange-hk-holding-ltd-notice-of-final-order.

[195] Ibid.

[196] Ibid.

• There was an order for divestment by Nexperia BV of 86 per cent of its shareholding in the entity Nexperia Newport Limited (known as Newport Wafer Fab pre-acquisition by Nexperia BV).[197] In late 2019, Wingtech Technology acquired a majority stakeholding in Nexperia.[198] Wingtech Technology is a telecom equipment manufacturing company based in Shanghai and "heavily backed by the Chinese Communist Party."[199] Nexperia then went on to acquire 100 per cent of Newport Wafer Fab's share capital by July 2021.[200] One of the risks to national security this acquisition by Nexperia presented was the "technology and know-how" possibly resulting from "compound semiconductor activities" at Nexperia Newport and how such activities could potentially place the UK at a serious disadvantage.[201]

• SiLight (Shanghai) Semiconductor Limited proposed a full acquisition of the shareholding of HiLight Research Limited.[202] As this would allow the former to effectively acquire HiLight's technological know-how that could be utilised for building "technological capabilities" that could pose national security risks for the UK, the order was made to prohibit the acquisition.[203]

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[197] "National Security and investment Act 2021 Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 16 November 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118369/NWF_Final_Order_Public_Notice_16112022.pdf.

[198] "New ownership opens up opportunities for Nexperia", Nexperia, 24 December 2019, https://www.nexperia.com/about/news-events/press-releases/new-ownership-opens-up-opportunities-for-nexperia.html.

[199] Sam Shead," The Chinese firm behind the acquisition of the UK's largest chip plant is state backed, analysis shows", CNBC, 7 July 2021, https://www.cnbc.com/2021/07/07/nexperia-owner-wingtech-is-backed-by-chinese-government-analysis-says.html.

[200] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 16 November 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118369/NWF_Final_Order_Public_Notice_16112022.pdf

[201] Ibid.

[202] "National Security and Investment Act 2021:SE: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 19 December 2022, https://www.gov.uk/government/publications/acquisition-of-hilight-research-limited-by-silight-shanghai-semiconductors-limited-notice-of-final-order/acquisition-of-hilight-research-limited-by-silight-shanghai-semiconductors-limited-notice-of-final-order.

[203] Ibid.

It is also useful to note that there were also a number of final orders made under the NSIA that did not amount to prohibitions of deals; some deals were permitted under certain conditions or when risk mitigations were put in place—and again, investor origin did not appear to always be a crucial determining factor:[204]

• Voyis Imaging Inc. (a Canada-based company which develops underwater scanning and imaging technology) was permitted to acquire assets owned by the University of Southampton by way of a licence.[205] It was deemed that a risk to national security would arise from "potential military uplift to foreign states" through acquiring the assets. As such, the final order required Voyis to perform due diligence screening on all new clients wishing to purchase the assets and to submit an annual report to the UK Government with the details of all new clients post-acquisition.[206]

• Viasat Inc. based in California, USA, was permitted to acquire a controlling shareholding (at least 75 per cent of shares) in Connect Topco Limited, a UK entity. It was deemed that risks to national security arose in connection with information protection and the UK being able to maintain its strategic capabilities. The final order required that Viasat puts controls in place to protect information from unauthorised access, and that strategic capabilities continue to be provided by Viasat to the UK government.[207]

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[204] Charles Livingstone, Greg Costello, and Molly O'Donoghue, "National Security and Investment Act 2021: key lessons one year on", Brodies LLP, 2 February 2023, https://brodies.com/insights/corporate/national-security-and-investment-act-2021-one-year-on/

[205] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 8 June 2023, https://www.gov.uk/government/publications/acquisition-of-assets-belonging-to-the-university-of-southampton-by-voyis-imaging-inc-notice-of-final-order/acquisition-of-assets-belonging-to-the-university-of-southampton-by-voyis-imaging-inc-notice-of-final-order ; see also "About Us", Voyis, https://voyis.com/about-us/

[206] Ibid.

[207] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 10 July 2023, https://www.gov.uk/government/publications/acquisition-of-connect-topco-limited-by-viasat-inc-notice-of-final-order/acquisition-of-connect-topco-limited-by-viasat-inc

• US-based Stellex Capital Management, a private equity firm, was permitted to acquire David Brown Santasalo S.à.r.l (a Luxembourg-based company) with UK origins and associated with David Brown Santasalo UK Limited (DBS). Should the UK-based DBS facility be relocated outside of the UK or its production output reduced as a result of the acquisition, the government considered that a national security risk would arise regarding the UK's security and defence capabilities. The final order required Stellex to ensure "continuity of supply in respect of critical Ministry of Defence programmes" and that "the capability necessary to maintain that continuity of supply" is kept within the UK.[208]

• Sichuan Development Holding Co. Ltd's acquisition of Gardner Aerospace (via Gardner's China-based parent company Ligeance Aerospace Technology Co. Ltd) was cleared subject to the following conditions:

- information-sharing must be restricted between the target UK entities and the Chinese acquirers,

- specific security measures have to be put in place,

- representatives of the Chinese acquirers from Gardner's board must be removed and an HM Government Observer to Gardner's board must be appointed, and

- the UK Government must be notified of any asset transfer from the UK entities to the Chinese acquirers.[209]

The reason for imposing these conditions was that the acquisition presented a national security risk in respect of a UK aerospace company. These conditions were deemed "necessary and proportionate" to mitigate such risks.[210]

[209] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 10 October 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1110182/acquisition_of_ligeance_aerospace_technology_co_Ltd_notice_of_final_order.pdf

[210] Ibid.

• The Secretary of State also imposed conditions on Stonehill Energy Storage Limited's acquisition of the full development rights for a UK battery storage facility known as the Stonehill Project/the Minety Battery Storage System.[211] While Stonehill Energy Storage Limited is a UK-registered company, UK Company House records showed that the State-Owned Assets Supervision and Administration Commission, a Chinese government department, is a "person with significant control": it has a shareholding of 75 per cent or more and has the right to remove or appoint directors.[212] The Secretary of State considered the acquisition presented risks to the security of a critical UK energy asset and the provision of electricity services to the UK National Grid. The conditions imposed for mitigation purposes were requiring Stonehill Energy Storage to seek prior approval from the UK Government when "appointing a power offtake operator" and that information sharing from the power offtake operator to Stonehill Energy Storage must be restricted.[213] Similar conditions applied to China Power International Holding Limited's acquisition of Hong Kong-based XRE Project Alpha Limited, the parent company of UK energy company XRE Alpha Limited.[214]

[210] Ibid.

[211] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 14 September 2023, https://www.gov.uk/government/publications/acquisition-of-the-stonehill-project-asset-development-rights-by-stonehill-energy-storage-ltd-notice-of-final-order/acquisition-of-the-stonehill-project-asset-development-rights-by-stonehill-energy-storage-ltd-notice-of-final-order ; see also "China Huaneng Launches The Second Phase of the UK Minety Battery Storage Project", KeyFacts Energy, 4 January 2022, https://www.keyfactsenergy.com/news/15961/view/

[212] Stonehill Energy Storage Limited, "Persons With Significant Control", Companies House, 1 August 2023, https://find-and-update.company-information.service.gov.uk/company/12924550/persons-with-significant-control

[213] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 14 September 2023, https://www.gov.uk/government/publications/acquisition-of-the-stonehill-project-asset-development-rights-by-stonehill-energy-storage-ltd-notice-of-final-order/acquisition-of-the-stonehill-project-asset-development-rights-by-stonehill-energy-storage-ltd-notice-of-final-order

[214] "National Security and Investment Act 2021: Publication of notice of final order", Department for Business, Energy, and Industrial Strategy, 2 May 2023, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1154300/XRE_Alpha_Varied_Final_Order.pdf

Reactions by Segments/Stakeholder to FDI

Decisions by governments to receive FDI can sometimes trigger stakeholder reactions, which may lead to conundrums for the investment-receiving jurisdiction. The four cases below involve reactions to foreign investment and national security, as well as the responses of companies to some FDI-related decisions.

Taiwan: In 2014, citizens protested the Cross Strait Services Trade Agreement (CSSTA) with the Sunflower Movement.[215] The agreement promised the opening of 64 industries in Taiwan to China and 80 industries in China to Taiwan, relaxing the trade restrictions between the two nations.[216] Protestors pressed for the adoption of "more effective legislative checks on cross-straits cooperation, particularly the signing and implementation of cross-straits agreements."[217] Some argued that the protests invigorated Taiwan's civil society, demonstrated the public's right to have a say in Cross-Straits issues, and paved the way for some Sunflower Movement participants to engage in politics more directly.[218]

Russia: The case of the South Stream Offshore gas pipeline project mentioned in Section 2 is an example of a bloc-level protest against state-backed FDI moves that would have divisive impacts upon the bloc. Alongside the fact that Bulgaria eventually decided to back away from its decision to proceed with the project due to pressure from its own opposition parties and the EC, there were also protests against the project by Bulgarians living in Varna.[219] As the gas pipeline would have been laid very close to residential areas, Varna residents protested over concerns regarding environmental impacts.[220]

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[215] JoAnn Fan, "The Economics of the Cross-Strait Services Agreement", Brookings, 18 April 2014, https://www.brookings.edu/opinions/the-economics-of-the-cross-strait-services-agreement/; Ming-sho Ho, "The Activist Legacy of Taiwan's Sunflower Movement", Carnegie Endowment for International Peace, 2 August 2018, https://carnegieendowment.org/2018/08/02/activist-legacy-of-taiwan-s-sunflower-movement-pub-76966.

[216] JoAnn Fan, "The Economics", 18 April 2014.

[217] Yu-Jie Chen and Jerome A. Cohen, "China-Taiwan Relations Re-examined: The '1992 Consensus' and Cross-Strait Agreements", Penn Law: Legal Scholarship Repository, 2019, p.5, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1039&context=alr.

[218] Ming-sho Ho, "The Activist Legacy of Taiwan's Sunflower Movement", Carnegie Endowment for International Peace, 2 August 2018, https://carnegieendowment.org/2018/08/02/activist-legacy-of-taiwan-s-sunflower-movement-pub-76966; J. Michael Cole, "Was Taiwan's Sunflower Movement Successful?", The Diplomat, 1 July 2014, https://thediplomat.com/2014/07/was-taiwans-sunflower-movement-successful/.

[219] "Varna locals rally against Russian-sponsored pipeline", Black Sea News, 9 September 2013, https://www.blackseanews.net/en/read/70029.

[220] Ibid.

Sri Lanka: In 2020, workers at the Colombo Port Eastern Container Terminal (ECT) protested the Sri Lankan government's intention to enter into an arrangement with India for the development of "a deep-sea container terminal" at Sri Lanka's biggest port.[221] The workers had indicated that they would strike indefinitely in the event the government permits the construction of the ECT to be undertaken by foreign interests, pressuring the government to build the terminal on a wholly Sri Lankan basis.[222]

Vietnam: In 2018, thousands of Vietnamese in Ha Tinh province held peaceful demonstrations protesting the Vietnamese government's intention to allow foreign investors to lease land for the creation of special economic zones.[223] Protestors were concerned that Vietnamese land would be leased to investors from China. Earlier in 2014, Sino-Viet relations were tense when Vietnam and China were disputing the installation of a Chinese oil rig in a section of the South China Sea that Vietnam claimed as its own. In protesting this, riots broke out in Ha Tinh province resulting in the deaths of 21 people and injury to almost 100 others.[224] In addition, protestors had set factories and industrial buildings ablaze, believing those to be Chinese-owned (when in fact they were either Taiwanese or South Korean-owned), and targeted Chinese workers.[225]

[221] "Sri Lankan port workers protest against proposed deal with India", The New Indian Express, 23 July 2020. https://www.newindianexpress.com/world/2020/jul/23/sri-lankan-port-workers-protest-against-proposed-deal-with-india-2173723.html.

[222] Ibid.

[223] "Thousands hold peaceful protests in Vietnam against foreign investment plans", Reuters, 17 June 2018, https://www.reuters.com/article/us-vietnam-protests-idUSKBN1JD0CW.

[224] Kate Hodal and Jonanthan Kaiman, "At least 21 dead in Vietnam anti-China protests over oil rig", The Guardian, 15 May 2014, https://www.theguardian.com/world/2014/may/15/vietnam-anti-china-protests-oil-rig-dead-injured.

[225] Ibid.

Singapore's Current Protocols for Foreign Investment Screening and the Case for a FDI Regime

The Ministry of Trade & Industry (MTI) oversees matters relating to Singapore's trade and investments, and ensures competitiveness and attractiveness to investors. Singapore has a moderately open investment regime and has specific sectoral regimes on FDI.[226] The Singapore Economic Development Board (EDB) and Enterprise Singapore (formerly known as International Enterprise Singapore) are statutory bodies under the auspices of MTI. Enterprise Singapore works to enhance industry and enterprise competitiveness of Singapore industries and facilitate expansion into overseas markets. EDB oversees the planning and executing of economic strategies to enhance Singapore's FDI competitiveness. EDB has in recent years introduced changes in measures to bolster FDI in the country by building deeper relationships between businesses and boosting local enterprises.[227]

Currently, Singapore does not have distinct laws governing foreign investment. Instead, there are separate regulation regimes for different sectors. These sectors variously relate to infrastructure assets that the public has access to or contexts where national security concerns take priority, such as broadcasting and local media, real estate, banking, and financial services.[228] Any formulation of a FDI screening regime will have to carefully calibrate Singapore's imperatives of maintaining an open and competitive economy whilst upholding national security interests. Further, Singapore's approach to foreign interference is taken into account when considering the risks and benefits of inbound FDI. Foreign interference, as per The Foreign Interference (Countermeasures) Act (FICA), is "(a) interference that is undertaken by or on behalf of – (i) a foreign principal; or another person acting on behalf of a foreign principal; and it (b) includes any activity undertaken or conduct engaged in as part of preparing for, or planning interference mentioned in paragraph (a)."[229]

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[226] Toby Grainger and Sam Ng, "Foreign direct investment in Singapore",21 January 2021, CMS Holborn Asia, https://cms-lawnow.com/en/ealerts/2021/01/foreign-direct-investment-in-singapore

[227] "EDB revamp to boost foreign investments, local enterprises", 21 January 2019, EDB Singapore, https://www.edb.gov.sg/en/business-insights/insights/edb-revamp-to-boost-foreign-investments-local-enterprises.html

[228] Mark Tan and Nicholas Hanna, "Out-Law Guide: Foreign direct investment in Singapore", Pinsent Masons, 1 March 2022, https://www.pinsentmasons.com/out-law/guides/singapores-foreign-investment-regime.

[229] "Foreign Interference (Countermeasures) Act 2021", Republic of Singapore Government Gazette Act Supplement, Part1 Section 6, 26 November 2021, https://sso.agc.gov.sg/Acts-Supp/28-2021/Published/20211125?DocDate=20211125&ViewType=Pdf&_=20221206164527.

It is clear from the examples discussed in this report that crafting a balanced and transparent approach to FDI screening is a difficult and delicate process. Other than navigating the trade-offs, there are numerous interests to be considered such as the weighing of national security factors vis a vis economic incentives deriving from FDI. Of interest to Singapore may be examining those regimes that have demonstrated a relative level of clarity and consistency in assessment and decision making. Although not exhaustive, the examples provided in this report and the survey of measures taken by various countries could provide policymakers with the necessary insights to review and update Singapore's FDI screening regime.

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