

Covid-19 coronavirus update: Global application of foreign investment control rules

Up-to-date as at 11/12/20

The table below sets out an overview, based on our awareness of the position as regards foreign investment control as at 11 December 2020, of the different approaches being taken by authorities around the world in response to the Covid-19 coronavirus pandemic.

For more information on the potential impact of coronavirus on the antitrust /foreign investment issues relevant to your business, please speak to your usual A&O antitrust or corporate contact.

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
Americas		
United States Committee on Foreign Investment in the United States (CFIUS)	<ul style="list-style-type: none">○ CFIUS processes are subject to delays.○ The Covid-19 outbreak will likely increase the U.S. Government's national security review of biotechnology mergers.○ The Coronavirus Aid, Relief, and Economic Security Act took effect on 27 March. Its aim is to offer emergency assistance for individuals and businesses affected by the pandemic. It provides for government review, 60 days after its enactment, of the security of the medical-product supply chain and U.S. dependence on global supplies, so as to avoid over-reliance on overseas production and shortages.	<ul style="list-style-type: none">○ A&O New York○ <i>Statement by former CFIUS staff chair, Mlex (25/03/20)</i>○ <i>Comment: Cfius to take harder look at foreign investment in supply-chain companies after Covid-19, Mlex (04/06/20)</i>

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
<p>Canada Department of Innovation, Science and Economic Development (ISED)</p>	<ul style="list-style-type: none"> ○ CFIUS is required to review a foreign acquisition in terms of both current product offering and of future product diversification to determine whether production relates to sensitive or critical supplies, and decide if foreign ownership could affect the supply chain and create instability or security concerns. <hr/> <ul style="list-style-type: none"> ○ Canada's ISED Investment Review Division released a policy statement on 18 April, announcing "enhanced scrutiny" under the Investment Canada Act (ICA) of foreign investments in Canadian businesses related to public health or the supply of critical goods and services, as well as "all foreign investments by state-owned investors." ○ For investments subject to review, investors are required to file an application with the Minister and to obtain approval prior to implementation. Under the national security review provisions of the ICA, which apply to foreign investments of any size, the Government may block a proposed investment, allow an investment with conditions (which can be imposed pre- or post-implementation), or order the divestiture of an implemented investment. Foreign investors are therefore strongly encouraged to consider the Act's review process in the early stages of their investment planning. This includes engaging with Innovation, Science and Economic Development Canada before the implementation of an investment. ○ Effective from 31 July 2020, certain review periods for national security screenings and reviews have been temporarily extended in light of the pandemic. Pursuant to the Time Limits and Other Periods Act (COVID-19) (TLPA), the Minister of Innovation Science and Industry issued a ministerial order providing: 	<ul style="list-style-type: none"> ○ Policy Statement on Foreign Investment Review and COVID-19 (18/04/20) ○ Blakes National Security Review Time Periods Temporarily Extended Under Investment Canada Act (07/08/2020) ○ Canada's 'enhanced scrutiny' to slow FDI reviews, PaRR (22/04/20) ○ Canada's proposed national security timeline extension could chill inbound dealmaking, PaRR (04/06/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
Europe	<ul style="list-style-type: none"> ○ For investments that require a filing (ie acquisitions of control by non-Canadians), the Government now has a total of 150 days following the filing to determine whether to initiate a full national security review. ○ For investments where no filing is required, the timelines have also been temporarily increased to allow the Minister to initiate the national security review process at any time during the 180 days (six months) after the date of implementation of the transaction. ○ Unless it is subsequently extended, the ministerial order does not allow for extended timeframes to go past 31 December 2020, and applies only in relation to applications or notifications certified on or after 31 July 2020. The changes apply to any investment by any non-Canadian in a Canadian business – even if there is no acquisition of control. ○ The purpose of the TLPA is "to temporarily authorize, in a flexible manner, the suspension or extension" of time limits in other Acts, including the ICA, to prevent the effects of Covid-19 from "making it difficult or impossible to meet those time limits" and to "prevent any unfair or undesirable effects" resulting from the expiration of those periods. 	
Austria	<ul style="list-style-type: none"> ○ On 15 July 2020, the Investment Control Act (InvKG) passed the Bundesrat (Federal Council). The InvKG considerably tightens FDI rules and provides for the national rules accompanying the EU FDI Screening Regulation. In particular, the InvKG will increase the scope of the Austrian FDI screening regime (including indirect transactions and asset deals) and provides for an extensive catalogue of areas in which a "threat to security or public order" may arise. ○ Acquisitions of 25% of the voting shares, asset transactions and acquisitions of controlling influence of companies listed in the catalogue require prior approval by the Federal Minister for Digital and Economic 	<ul style="list-style-type: none"> ○ Binder Grösswang <i>The review of foreign direct investment in Austria: The new Investment Control Act (07/2020)</i>

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
<p>European Union European Commission (EC)</p>	<p>Affairs. A lower threshold of a 10% stake applies to acquisitions of Austrian companies that are active in particularly sensitive industries, such as defence, critical energy and digital infrastructure (in particular 5G), water, 'systems that guarantee data sovereignty' and R&D in the field of medicine.</p> <ul style="list-style-type: none"> ○ The EC has issued guidelines to help Member States screen foreign direct investment (FDI) to prevent foreign entities from taking over European companies in certain key sectors such as health, medical research, biotechnology and infrastructures that are essential for security and public order. Member States are urged to create mechanisms for screening FDI and to deploy them. ○ Commissioner Vestager has said the EC is 'intensively' working on ideas to halt hostile foreign takeovers and has been reported as saying that the EC is open to Member States taking strategic stakes in European companies. ○ EU governments should start "informal" cooperation with the European Commission to screen foreign direct investment, in a bid to prevent predatory takeovers of key European companies struggling due to the Covid-19 pandemic, the bloc's trade chief Phil Hogan has said. ○ Europe's tourism sector needs to be protected from "aggressive" investment strategies from non-EU companies that want to take advantage of the Covid-19 crisis through takeovers, the bloc's industry chief Thierry Breton said on 21 April. ○ The EC published a White Paper on 17 June outlining proposals to deal with the distortive effects caused by foreign subsidies. One option on the table is a mandatory filing system to review foreign-backed acquisitions of European businesses. The detailed triggering factors and thresholds are left open to debate, but the measure could catch both acquisitions of control and the acquisition of minority shareholdings. The White Paper 	<ul style="list-style-type: none"> ○ President Ursula von der Leyen tweet (25/03/20) ○ Commission Communication Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation) (25/03/20) ○ Press release, EC (25/03/20) ○ Margrethe Vestager statement to Friends of Europe (27/03/20) ○ Financial Times (12/04/20) ○ EU governments should screen FDI to prevent predatory takeovers amid Covid-19 crisis, Mlex (16/04/20) ○ Introductory statement by Commissioner Phil Hogan at Informal meeting of EU Trade Ministers (16/04/20) ○ Protect EU tourism-sector businesses from 'aggressive' foreign

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<p>proposes a two stage review process (running parallel to any merger control or foreign investment control review procedures), with the EC having the ability to accept commitments to remedy any distortion to the internal market, as well as the power to block a transaction. Administrative sanctions would apply for violation of the procedural rules, and it is proposed that the EC would be able to start an investigation on its own initiative if parties did not make a filing, including post-closing. The consultation on the White Paper runs until 23 September 2020 and draft legislation is expected in 2021.</p>	<p><i>takeover bids, Breton urges</i>, Mlex (21/04/20)</p> <ul style="list-style-type: none"> ○ <i>Chinese M&A approaches might face new EU filing obligation</i>, Mlex (05.06.20) ○ <i>EU seeks tougher checks on foreign buying of European firms</i>, Reuters (09/06/20) ○ <i>EC white paper on levelling the playing field as regards foreign subsidies</i> ○ <i>A&O alert - European Commission targets foreign subsidies causing market distortions</i> (19/06/20)
<p>France Treasury Department of the Ministry of Economy</p>	<ul style="list-style-type: none"> ○ On 7 August 2020, a Decree entered into force, temporarily lowering the notification threshold for investments in listed French companies that are active in a sensitive sector by non-EU/EEA investors. The threshold will be lowered from the current 25% to acquisitions of 10% of the voting rights. The temporary measure will apply until (at least) 31 December 2020. The list of sensitive sectors includes defence and aerospace, security, energy, transport, telecoms, energy, water, public health, food production, press services and various technologies. ○ In order to limit the impact on market liquidity, the Decree provides for a simplified notification procedure for investments between 10% and 25%. An intended transaction notified to the French Treasury will be deemed cleared if the Treasury does not raise objections within 10 business days. ○ On 30 April 2020, the French Government extended the scope of the legislation to cover the biotechnology sector (as set out in an order dated 	<ul style="list-style-type: none"> ○ A&O Paris ○ <i>Order published in French Official Journal</i> (27/04/20) ○ <i>France to lower threshold for FDI screening to 10% stake for large companies amid COVID-19 crisis</i>, PaRR (29/04/20) ○ <i>France extends FDI screening to biotech sector</i>, PaRR (30/04/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
<p>Germany Federal Ministry for Economy and Energy</p>	<p>27 April and published in the French official journal on 30 April). This extension entered into force on 1 May 2020.</p> <ul style="list-style-type: none"> ○ The Covid-19 pandemic could reinforce the trend for an increasingly broad interpretation of the concept of "public order and safety" to catch, for example, companies in the textile industry involved in the production of personal protective equipment. ○ The Covid-19 pandemic could lead to delays in the processing of applications. ○ On 8 April 2020, the German Federal Government proposed various amendments to the German Foreign Trade and Payment Act (Act). The proposal was adopted by the German Parliament on 18 June 2020, published on 16 July 2020 and entered into force with effect from 17 July 2020. ○ The amendments include: <ul style="list-style-type: none"> ○ a lower threshold for Government intervention: a probable impairment, rather than an actual threat (as is currently the case), to German public order or security will be sufficient to enable the Government to intervene and open review proceedings; ○ consideration of EU factors: the Government will be able to take into account not only national interests but also interests of other EU Member States and the EU as a whole (implementing the new EU FDI regime); ○ extension of suspensory effect: transactions involving critical infrastructure will be subject to the suspensory effect that currently applies to the defence and encryption sector. This change will have limited impact on M&A transactions given German market practice for closing to be conditional upon FDI clearance; and 	<ul style="list-style-type: none"> ○ A&O Frankfurt ○ A&O alert – <i>Covid-19 coronavirus: Foreign Direct Investment Control – What investors from outside the European Union need to know now</i> (20/03/20) ○ A&O alert - <i>Germany tightens the rules in light of the Covid-19 pandemic</i> (09/04/20) ○ A&O alert - <i>Germany: Update on Foreign Direct Investment Screening - Health care sector becomes part of critical infrastructure</i> (05/06/20) ○ A&O alert - <i>Foreign Direct Investment Screening in Germany – most recent developments - What foreign investors need to consider</i> (19/06/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<ul style="list-style-type: none"> ○ a ban on sharing information prior to the FDI (“gun jumping”). Breaches will be a criminal offence, punishable by a maximum 5-year prison term. ○ On 27 April 2020, a first draft of the 15th amendment to the German Foreign Trade and Payment Ordinance (Ordinance) was published. This proposal was approved by the German Federal Government on 20 May 2020 and took effect on 3 June 2020. It provides for the following, in particular: <ul style="list-style-type: none"> ○ for extension of the list of companies which qualify as critical infrastructure (and therefore are subject to the 10% threshold and suspension requirement) to include (amongst others): digital radio of authorities, personal protective equipment (including preliminary products and components), essential drugs (including starting materials and active ingredients), in vitro diagnostics in the field of infectious diseases (including precursors and components), medical devices for infectious diseases (including preliminary products and components); ○ that asset deals fall within the scope of the regime (i.e. the acquisition of (i) a definable business part of a German company or (ii) all essential operating resources of a German company (or part of it) shall constitute an acquisition); ○ that the review should take into account whether an acquirer is directly or indirectly controlled by the government (including other governmental agencies or armed forces of a third country), or whether such control over the acquirer may be exercised, in particular by the ownership structure or in the form of financial resources, over and above a negligible level (ie the German regulations implement the criteria set out in Art. 4(2) of the EU Screening Mechanism). ○ On 8 October 2020, the German Government approved a further amendment of the Ordinance. This amendment was aimed at aligning the 	

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
<p>Hungary Hungarian Government</p>	<p>Ordinance to the latest amendments of the Act but instead provides only for procedural provisions. These should have no material impact on the clearance procedures. It is expected that this amendment will enter into force very shortly.</p> <ul style="list-style-type: none"> ○ Recently, the German Government stated that it will extend the scope of the catalogue of “critical infrastructure” in the near future. However, the discussion about the relevant industries is still on-going and we do not expect the enactment of such an extension until late 2020 or early 2021. For the time being only a procedural amendment has been made. <hr/> <ul style="list-style-type: none"> ○ On 25 May 2020, the Hungarian Government adopted a decree declaring that the acquisition of ownership by foreign investors in strategic companies registered in Hungary and of strategic assets is subject to prior ministerial approval. The decree entered into force on 26 May 2020 and will be in force until 31 December 2020. ○ Under the decree ‘foreign investor’ refers to natural and legal persons or entities registered outside the EU, EEA or Switzerland, but even Hungarian, EU, EEA and Swiss legal persons or entities may be required to make a notification, if they are owned / controlled by a foreign investor or if the acquisition of ownership results in majority control as defined in the Civil Code. ○ In order for a company to qualify as a ‘strategic company’, the following conditions must be met: <ul style="list-style-type: none"> ○ its main activity or ancillary activity is an activity listed in Annex 1 of the decree, such as activities related to the production of pharmaceuticals, telecommunication, manufacture of weapons and ammunition, agriculture, healthcare, tourism, waste management, transport, etc. 	<ul style="list-style-type: none"> ○ A&O Budapest ○ <i>Government decree 227/2020. (V. 25.) on the measures necessary for the economic protection of companies established in Hungary in order to prevent and remedy the consequences of the human epidemic causing a mass illness endangering the safety of life and property</i> (in Hungarian)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<ul style="list-style-type: none"> ○ such activities are conducted in the qualified sectors as defined by the decree (energy, transport, communications, financial, credit and insurance sectors, or a strategically important sector as defined in Articles 4(1)(a) to (e) of Regulation (EU) 2019/452, i.e., critical infrastructure, critical technologies and dual use items, supply of critical inputs, access to sensitive information, or the freedom and pluralism of the media). ○ The acquisition of ownership in strategic companies by foreign investors as defined by the government decree is subject to a 'notification' to the minister of innovation and technology and the 'acknowledgment of the notification' by the same minister. ○ The transactions covered include: (i) acquisitions of ownership if they result in majority control as defined by the Civil Code or (ii) acquisitions of ownership if the ownership reaches 10% and the value of the investment is at least HUF350 million (an acquisition must also be notified if the ownership reaches 15%, 20% or 50%, or if the total ownership of foreign investors would exceed 25%); and (iii) acquisitions of infrastructure or a right to use infrastructure that is indispensable for any activity within the above strategic sectors. ○ A standstill obligation applies until the minister's acknowledgement is obtained, which means that the ownership may not be registered in the company's members' list or shareholders' list and the foreign investor cannot exercise any ownership right in the strategic company. The minister has 45 calendar days to acknowledge the acquisition of ownership or to prohibit it, which can be extended by 15 calendar days. The decision of the minister may be challenged in administrative litigation proceedings before the Metropolitan Court of Budapest. ○ A transaction that breaches the standstill obligation shall be considered null and void. 	

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<ul style="list-style-type: none"> ○ In case of non-compliance with the provisions of the decree or with the decision of the minister, the foreign investor may receive an administrative fine up to twice the value of the underlying transaction, but at least HUF100,000 (in the case of natural persons) and at least 1% of the annual net turnover of the company (in the case of legal persons). 	
<p>Italy Autorita Garante della Concorrenza e del Mercato (AGCM)</p>	<ul style="list-style-type: none"> ○ The Government has extended the scope of application of its so-called 'golden powers' to many previously excluded sectors. Notification obligations for transactions by non-Italian EU and non-EU entities have also been extended. ○ The new rules (Law Decree n. 23, published in the Official Gazette of April 8, 2020 (Liquidity Decree), amending Legislative Decree no. 21/2012 on so-called "Golden Powers") came into force on 9 April 2020 and aim to: <ul style="list-style-type: none"> ○ contain the negative effects of the Covid-19 coronavirus emergency on assets of national strategic importance; and ○ amend and supplement provisions under the initial "Golden Powers" legislation that had introduced new rules, including in relation to transactions involving 5G networks. ○ The introduction of the 'golden powers' rules have resulted in a significant uptake in FDI filings, from 30-40 per year in the period 2012-2018 to more than 200 in 2020. According to a senior government official, only one transaction was vetoed and around 10% of cases required remedies. 	<ul style="list-style-type: none"> ○ CPI reporting on a Radio 24 interview with deputy Economy Minister Antonio Misiani ○ A&O alert - <i>Covid-19 coronavirus: Italian Government increases its special powers on foreign investment control ("Golden Powers")</i> (14/04/20) ○ PaRR – <i>Italy FDI: more than 200 'golden power' notifications in 2020</i> (03/11/20)
<p>Netherlands Ministry of Economic Affairs and Climate Policy</p>	<ul style="list-style-type: none"> ○ The Government has proposed, and started a public consultation for, an act introducing a screening mechanism (<i>Wet toetsing economie en nationale veiligheid</i>). The Government has expedited the adoption of this act in light of the Covid-19 pandemic. In addition, investments taking place as from 2 June 2020 may be screened retroactively if necessary. It is likely that this will only affect exceptional investments that give rise to a serious threat to national security. 	<ul style="list-style-type: none"> ○ A&O alert - <i>Covid-19 coronavirus: Upcoming FDI regime in the Netherlands</i> (04/06/20) ○ <i>Public consultation on the proposed act (Wet toetsing economie en nationale veiligheid)</i> (08/09/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<ul style="list-style-type: none"> ○ The screening mechanism will apply to undertakings that are of significant importance for the continuity and resilience of critical processes and to companies that are active in the field of sensitive technologies. ○ The list of critical processes will be laid down in an administrative act. This act will be based on the list prepared by the Dutch National Coordinator for Terrorism Prevention and Security, which includes various activities in the energy, telecom, transport, petro-chemical, and financial sectors. ○ Sensitive technologies include military items and items covered by the EU Dual Use Regulation. The Government may qualify additional technologies as sensitive technology by means of general administrative measures. ○ The proposed act is aimed at addressing the following national security concerns in particular: (i) risks to the continuity of critical processes, (ii) impairment of the integrity and exclusivity of know-how or information, and/or (iii) the creation of strategic dependencies. 	
Poland Office of Competition and Consumer Protection	<ul style="list-style-type: none"> ○ The Polish Parliament (Sejm) has adopted regulations including anti-takeover provisions as part of the 'Anti-Crisis Shield 4.0', including an amendment to the Act on Control of Certain Investments, which will come into force on 24 July 2020 for 24 months. ○ Under the Act, non-EU foreign persons or entities which intend to acquire or achieve significant participation or dominance in certain Polish companies (Protected Entities) must notify the intention of the acquisition to the Office of Competition and Consumer Protection (OCCP). The Act gives the President of the OCCP additional powers to protect Polish enterprises whose business is of importance to public order, public security or public health. ○ A Protected Entity is a Polish entity deriving income from the sale of goods and provision of services in Poland exceeding the equivalent of EUR10m in any of the two financial years preceding the notification and (a) is a public 	<ul style="list-style-type: none"> ○ <i>Polish government looks to develop foreign takeover prohibition powers, PaRR (22/04/20)</i> ○ Announcement by Polish Government (20/05/20) ○ <i>Polish parliament adopts regulations on foreign investment, PaRR (09/06/20)</i> ○ Announcement by Polish Government (08/06/20) (in Polish) ○ Announcement by Polish Government (08/06/20) (in English)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<p>company; (b) holds assets disclosed in the list of facilities, installations, devices and services comprising the critical infrastructure indicated in the Act on Crisis Management; or (c) is an entity carrying out business activity in the specified strategic sectors listed in the amended Act on Control of Certain Investments.</p> <ul style="list-style-type: none"> ○ The Act covers a wide range of activities in various industries, including electricity and heating, oil & gas, chemicals (incl. rhenium), mining, port activities (transshipment), telecommunication, healthcare, medication and pharmaceutical preparations, food, software, defence and police. 	<ul style="list-style-type: none"> ○ A&O alert - Act on the Control of Certain Investments – information on recent changes (06/07/20)
<p>Slovenia Ministry of Economic Development and Technology</p>	<ul style="list-style-type: none"> ○ From 31 May 2020, foreign investors originating from the EU, the EEA, Switzerland or third countries, who have acquired or intend to acquire at least a 10% share in the capital or voting rights in a Slovenian company must notify the Ministry of: <ul style="list-style-type: none"> ○ the conclusion of a share purchase agreement or a public takeover bid, or ○ the establishment, expansion or diversification of a corporate entity, or ○ the acquisition of a right to dispose of real estate in a number of sectors/industries of focus. ○ Industries and sectors of focus are critical infrastructures (both physical and virtual), real estate, critical technologies and dual use items, the supply of critical resources, companies with access to or control over sensitive information (including personal data), companies active in the media sector and/or projects or programmes of Union interest. ○ The provisions are set out in the Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic and will apply until 30 June 2023. 	<p>Announcement by Slovenian Government (20/05/20)</p>

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
<p>Spain General Directorate of International Trade and Investments (Dirección General de Comercio Internacional e Inversiones)</p>	<ul style="list-style-type: none"> ○ A restriction on foreign direct investments in Spain entered into force on 18 March 2020. It requires prior government authorisation: <ul style="list-style-type: none"> ○ of any investment by (i) non-EU or non-EFTA nationals; or by (ii) EU or EFTA residents, where the real ownership of the investment corresponds to non-EU or non-EFTA residents. Real ownership is deemed to exist when a non-EU or a non-EFTA resident owns or controls, directly or indirectly, more than a 25% of the investor's capital or voting rights, or when by other means it exercises direct or indirect control of the investor where either 10% or more of the share capital of a Spanish company is acquired or when as a result of the transaction the investor controls the Spanish target company – in certain sectors (critical infrastructure, critical technologies and dual-use items, supply of fundamental inputs, sectors with access to sensitive information, media and other sectors where public security/order/health may be affected). ○ if the foreign investor is directly or indirectly controlled by a foreign government, has made investments or participated in activities in sectors affecting public security/order/health or there is a serious risk that the foreign investor carries out criminal or illegal activities. ○ Authorisation is also required for any transaction where the parties have already reached an agreement or even a binding offer in which the price has been fixed or determined or is determinable, prior to the entry into force of the Royal Decree-Law 8/2020, (ie prior to 18 March 2020). ○ All transactions below EUR1m are exempt from requiring authorisation. ○ Royal Decree-Law 34/2020, which came into force on 19 November, significantly extends the scope of investments requiring authorisation. In particular: 	<ul style="list-style-type: none"> ○ Royal Decree-Law 8/2020 (in Spanish), modifying Law 19/2003 ○ Royal Decree-Law 11/2020 (in Spanish), modifying Royal Decree-Law 8/2020 and Law 19/2003 ○ A&O alert – Urgent measures against the economic impact of Covid-19: Spanish Golden Share (18/03/20) ○ A&O alert - Covid-19 coronavirus: the Spanish Government hardens the suspension upon the foreign direct investment in Spain (08/04/20) ○ A&O alert - Significant changes in the Spanish FDI regime (23/11/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<ul style="list-style-type: none"> ○ The concept of ‘control’ has been expanded to include control resulting from contracts, rights or any other means conferring the possibility of exercising decisive influence on a company, in particular, through: <ul style="list-style-type: none"> ○ ownership rights or rights of use of all or part of the assets of a company; ○ contracts, rights or any other means allowing decisive influence over the composition, deliberations or decisions of the company's bodies. ○ The new definition of control will apply in determining whether a foreign government controls a foreign investor, and may therefore catch investments previously out of scope. Prior authorisation will now be required where there is a “serious risk that the foreign investor carries out criminal or illegal activities” (a more subjective test than the previous “has any open administrative or judicial proceedings for criminal or illegal activities” test). ○ Various amendments have been made to the definitions of the strategic sectors caught by the authorisation requirement. ○ Investments by EU and EFTA residents in Spanish companies operating in a strategic sector will be subject to a temporary authorisation regime, applicable until 30 June 2021. Authorisation will be required if an EU/EFTA resident either (i) acquires 10% or more of the share capital or (ii) controls, as a result of the transaction: <ul style="list-style-type: none"> ○ a listed company in Spain or ○ a non-listed Spanish company, if the value of the investment exceeds EUR500 million. ○ The temporary regime also applies where the investment is made by a Spanish resident beneficially owned by an EU or EFTA resident. Beneficial ownership is deemed to exist when the EU/EFTA resident 	

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
United Kingdom Department for Business, Energy & Industrial Strategy (BEIS)	<p>ultimately owns or controls, directly or indirectly, more than 25% of the capital or voting rights of the Spanish investor.</p> <ul style="list-style-type: none"> ○ On 11 November 2020 the UK Government published its National Security and Investment Bill (Bill). The Bill will drastically expand the Government's powers to scrutinise investment on national security grounds, through a requirement for mandatory notification of transactions in 17 identified sensitive sectors backed by a "call-in" power applying to an extremely wide range of transactions across all sectors of the economy, with no turnover or market share thresholds (the target need only carry on activities or supply customers in the UK). The Bill has immediate implications for on-going transactions, because the "call-in" power will apply retrospectively to any transaction that has not completed before 12 November 2020. ○ The UK Government has been considering a strengthening of its investment screening regime for a number of years, amid increasing political concern over potential national security risks posed by foreign ownership of strategic or sensitive UK businesses/assets. The Bill therefore should not be viewed as being purely in response to the Covid-19 coronavirus pandemic. However, the pandemic likely increased the Government's appetite to introduce the Bill. ○ On 23 June 2020, a new public interest consideration to the UK merger control regime entered into force: public health emergency. The public health emergency consideration allows the Government to intervene and scrutinise mergers and takeovers to ensure that they do not threaten the UK's capability to combat, and to mitigate the effects of, public health emergencies. While it will be open to the Government to intervene in relation to all transactions, both domestic and foreign, meeting the jurisdictional thresholds, the Government's press release announcing the proposal calls out only the threat of foreign takeovers. 	<ul style="list-style-type: none"> ○ Government press release – <i>New powers to protect UK from malicious investment and strengthen economic resilience</i> (11/11/20) ○ National Security and Investment Bill ○ A&O alert - <i>Changes to UK merger control: public health emergencies and national security</i> (24/06/20) ○ A&O alert – <i>National Security and Investment Bill: a new frontier for scrutiny of investment in the UK</i> (12/11/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
Asia Pacific		
Australia Foreign Investment Review Board (FIRB)	<ul style="list-style-type: none"> ○ The Government has announced temporary changes to Australia's foreign investment review framework. In particular: <ul style="list-style-type: none"> ○ with some minor exceptions, the threshold amounts which apply in determining whether particular foreign investments are subject to Australia's foreign investment framework are now AUD0 (previously these thresholds could be as high as AUD1,192bn depending on the type of investment and the home country of the investor); and ○ statutory deadlines for the consideration of applications may be extended by up to six months (however, urgent applications for investments that protect and support Australian business and Australian jobs will be prioritised). ○ Where Covid-19 measures result in delays to, or deferrals of, investment decisions that are currently the subject of a FIRB application, and the applicant wishes to withdraw that application, the FIRB will consider refunding the fee paid. ○ The Government has announced reforms to Australia's foreign investment review framework in connection with national security risks, strengthening compliance measures, streamlining approval processes, and administrative enhancement: <ul style="list-style-type: none"> ○ A new national security test for foreign investors who will be required to seek approval to start or acquire a direct interest in a 'sensitive national security business', regardless of the value of the investment. ○ A time-bound 'call in' power enabling the treasurer to review acquisitions that raise national security risks outside of proposed acquisitions relating to a 'sensitive national security business'. 	<ul style="list-style-type: none"> ○ FIRB news release (23/03/20) ○ FIRB news release (29/03/20) ○ FIRB media release (29/03/20) ○ A&O alert - Covid-19 related temporary changes to Australia's foreign investment laws (08/04/20) ○ FIRB news release (05/06/20) ○ Australia announces new national security test for foreign investors, PaRR (05/06/20) ○ Foreign Investment in Australia, Australian Government Productivity Commission (23/06/20) ○ Major reforms to the Foreign Investment Review Framework – September 2020, Treasury (18/09/20) ○ Major reforms to Australia's foreign investment framework pass the parliament, Treasury (11/12/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<ul style="list-style-type: none"> ○ A national security last resort power that gives the ability to impose or vary conditions and in extraordinary; circumstances order disposal on national security grounds. ○ Stronger and more flexible enforcement options, including the expansion of infringement notices and higher civil and criminal penalties. ○ Measures to streamline approval for passive investors and investments into non-sensitive businesses. ○ The bill to enact the FIRB reforms was passed by the Australian Government on 9 December 2020 with an effective date of 1 January 2021, however the associated guidance notes and regulations are yet to be published and these documents will cover key elements of the changes including the definition of national security business, national security land, fee regulations, streamlining of passive foreign government investors, and moneylending. The temporary changes to the FIRB regime in response to the COVID-19 pandemic will also expire on 1 January 2021. 	
India Ministry of Commerce & Industry	<ul style="list-style-type: none"> ○ The Government has amended its Consolidated Foreign Direct Investment Policy dated 28 August 2017 "for curbing opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic". Any investment from an entity in a country sharing a land border with India can only be made with government approval. The restriction was previously applicable only to investments from Bangladesh and Pakistan. All such investment from China will therefore now require prior approval of the Indian Government, and this approval requirement also applies to transactions, where the beneficial owner of the investment, (whether directly or indirectly) is from China. The Finance Ministry has notified the revised foreign direct investment rules, which will come into effect immediately. 	<ul style="list-style-type: none"> ○ Department for Promotion of Industry and Internal Trade, FDI Policy Section, Press Note No. 3(2020) Series (17/04/20) ○ India amends inbound foreign investment rules amid pandemic, PaRR (20/04/20) ○ India notifies revised foreign investment norms for border-sharing countries, PaRR (23/04/20) ○ India may set 10% beneficial ownership cap for investments from

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<ul style="list-style-type: none"> ○ To clarify the definition of 'beneficial ownership', India is considering a 10% 'beneficial ownership' cap for investments flowing in from land border-sharing countries – under which any FDI from companies in which citizens or entities of these neighbouring countries own more than 10% will need prior government approval. ○ On 16 May 2020, the Government announced reforms including increasing the foreign direct investment cap for automatic approval in defence production to 74% from the current 49%. ○ On 19 June 2020, the Finance Ministry unveiled a proposal included in a draft notification that would restrict FDI in pension funds by entities from the countries it shares borders with. India currently allows 49% FDI under the automatic route for pension funds governed by the Pension Fund Regulatory and Development Authority. The restriction is expected to be effective from the date of the government notification. 	<p><i>border-sharing countries</i>, PaRR (11/5/20)</p> <ul style="list-style-type: none"> ○ Government press release on new reforms (16/05/20) ○ <i>India opens up commercial coal mining; hikes FDI cap in defense production</i>, PaRR (18/05/20) ○ <i>India proposes mandatory approval for Chinese FDI in pension funds</i>, PaRR (22/06/20)
<p>Japan Ministry of Finance/other relevant ministries</p>	<ul style="list-style-type: none"> ○ From 7 June 2020, foreign investors need regulatory clearance to acquire stakes of 1% (down from the previous level of 10%) or more, calculated based either on outstanding shares or voting rights, in domestic listed businesses in certain industries. These include nuclear power, electric power, space industries, telecoms, semiconductors, weapons, cybersecurity, utilities and aviation. If a foreign investor already holds 1% or more of the shares of a Japanese listed company, prior notification is required for any additional purchases of shares in that company. Overseas investors also need regulatory approval before appointing a person who is closely connected with the investor as a director or proposing the sale of crucial businesses. Various exemptions may apply. ○ In May, the Government released a list of companies that engage in designated businesses, investment in which require prior reporting. The 	<ul style="list-style-type: none"> ○ A&O Tokyo ○ A&O alert - Amendments to Japan's foreign investment regulations (03/06/20) ○ <i>Japan to impose foreign investment curbs in pharmaceutical sector from 15 July</i>, PaRR (15/06/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<p>amendment to the law and related regulations came into force on 8 May and the full application of the new rules started on 7 June 2020.</p> <ul style="list-style-type: none"> ○ The Government has also formally published a proposal expanding the scope of sectors of critical fields to be protected in the context of Covid-19 to include the pharma and medical equipment sectors. The proposal was open for public comments until 30 May. It is expected that those sectors will be included in the critical fields sector in due course. ○ On 15 June, the Government announced that the following business would be designated as core business that require a pre-investment notification filing: <ul style="list-style-type: none"> ○ Manufacturing medicines or pharmaceutical products (including intermediate products) for infectious diseases; and ○ Manufacturing highly-managed pharmaceutical devices. 	
New Zealand	<ul style="list-style-type: none"> ○ The Government has fast tracked amendments to the Overseas Investment Act to protect key New Zealand assets from falling unnecessarily into foreign ownership as the economy recovers from the fallout of the pandemic. The amendments came into force on 16 June 2020. The changes: <ul style="list-style-type: none"> ○ Bring forward the introduction of a national interest test to New Zealand's most strategically important assets (such as dual-use military technology, designated ports and airports and telecoms infrastructure). ○ Introduce a temporary measure: the application of the national interest test to any foreign investments, regardless of dollar value, that result in more than a 25% ownership interest, or that increase an existing interest to – or beyond – 50%, 75% or 100% in a New Zealand business. The temporary measure requires a simple notification and will be reviewed every 90 days, remaining in place only as long as it is necessary to protect the essential interests of New Zealand while the 	<ul style="list-style-type: none"> ○ New measures to protect New Zealand's national interest during COVID-19 crisis, Government press release (13/5/20) ○ New Zealand's foreign investment update would introduce new government powers, raise penalties, Mlex (22/05/20) ○ Better protection for New Zealand assets during COVID-19 crisis, Government press release (28/05/20) ○ New Zealand's 'urgent measures' for foreign investment to enter into force, Mlex (28/05/20)

Jurisdiction/region/regulatory authority	Foreign investment statement/development	Source
	<p>Covid-19 pandemic and its economic aftermath continues to have significant impact in New Zealand. Once the temporary measure ends, a national interest test will remain for business transactions at a minimum threshold of NZD100m, or higher if set by the terms of an international trade agreement, as well as investments in sensitive land and fishing quota. This measure was extended for another 90 days in each of September and November 2020.</p> <ul style="list-style-type: none"> ○ Establish a national security and public order ‘call in’ power, which will apply once the temporary measure ends (or after 24 months, whichever is earlier). It will give the Government the power to determine whether certain investments in strategically important businesses give rise, or are likely to give rise, to a significant risk to New Zealand’s national security or public order. ○ Increase penalties for breach of the rules, to a maximum of NZD500,000 for individuals and NZD10m for other parties. 	<ul style="list-style-type: none"> ○ New rules around overseas investment support economic recovery (16/06/20) ○ Overseas investors must continue to notify OIO, Government press release (02/09/20) ○ Temporary emergency notification requirement, Government press release (17/11/20)

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP’s affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2021. This document is for general guidance only and does not constitute definitive advice. | UKS1: 2001710311.26