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Executive summary

Geopolitical shifts are reshaping Foreign direct investment (FDI) worldwide.

Trade wars, political volatility, and national security concerns are no longer background noise – they've become defining forces in global investment strategy.

FDI is now a frontline issue in the geopolitical contest for economic power, and investors are contending with an environment marked by rapid policy shifts, heightened scrutiny and growing uncertainty.

This edition of the Foreign Investment Monitor explores how shifting political and regulatory forces are redefining global investment.

This issue covers key developments that every investor needs to know:

1. **World war tariff: Is the global trade conflict redrawing the FDI map?**

   The Trump administration's Liberation Day tariffs have upended the international trade order. What could this mean for foreign investment?

2. **Nippon Steel's unprecedented resurrection: Right answer for the wrong reason**

   President Trump's revival of the Nippon Steel deal signals a new era of politicized investment review in the United States. As CFIUS becomes a tool of domestic strategy, foreign investors face greater uncertainty – and higher stakes.

3. **Japan's foreign investment regime gets sharper teeth: Are investors ready for the bite?**

   Japan is tightening its grip on foreign investment in the name of national security. With new rules and broader oversight, even low-risk deals may now face scrutiny.

4. **Peeking into the black box: What UK court rulings reveal about national security reviews**

   Court rulings are offering rare insights into the UK's national security review regime. For investors, the message is clear: process matters, and preparation pays.

5. **Politics, power, and investment: Transatlantic developments in FDI control**

   As foreign investment regimes harden across the transatlantic corridor, scrutiny is becoming sharper, broader and more political. In the EU, Dublin and Ottawa, once-routine deals are increasingly being viewed through a national security lens.

World war tariff: Is the global trade conflict redrawing the FDI map?

In brief

In the U.S., rising import costs could drive more foreign investment into domestic production, while reforms to CFIUS may create a more investor-friendly environment – though uncertainty remains. In the EU, transatlantic tensions are prompting closer scrutiny of U.S. investors, even if formal policy shifts are limited for now. Meanwhile, China is taking a two-track approach – retaliating strategically while working to reassure international investors and protect long-term inflows. Across all three markets, trade policy is becoming a key driver of FDI decisions.

From tariffs to tactics: How U.S. policy is reshaping the FDI landscape

Elements of the Trump administration tariff regime and their possible downstream regulatory effects could make the United States more attractive for global investors. At the same time, the ongoing trade conflict could adversely shift how Washington approaches inbound investment. Either way, the Committee on Foreign Investment in the United States (CFIUS), is likely to find itself center stage.

As the absolute cost of exporting to the U.S. increases, the relative cost of investing in the U.S. could decline. Higher tariffs could therefore encourage foreign investors to localize production in the United States to avoid escalating import duties, particularly in sectors most acutely affected by the new regime.

That shift is already underway. General Motors recently announced a $4 billion investment package into its U.S. plants over the next two years to boost U.S.-based manufacturing and reduce its exposure to the Trump tariffs. Mercedes has also announced plans to ramp up domestic vehicle production to reduce the impact of the new automobile tariffs and Honda is shifting its supply chains to use more U.S.-produced parts. Apple, Nvidia, IBM, TSMC, Johnson & Johnson, and Merck are among other companies that have committed to new U.S. investment since the onset of the new Trump tariffs.

Streamlining foreign investment in 2025

The Trump administration aims to aggressively re-shore U.S. domestic production. It has already announced an initiative to cut red tape for large foreign investors and released the America First Investment Policy directive, which specifically notes the need to streamline regulatory burdens for foreign investors. If that includes making CFIUS more investor-friendly, we could see a shift to a more permissive posture towards foreign investment, including to help offset broader economic disruption.

At the same time, the White House has made clear that “economic security is national security.” Meaning that transactions in politically sensitive sectors or businesses (e.g., steel, automotive) that traditionally would not have raised national security concerns could receive greater scrutiny from CFIUS. However, the Trump administration has emphasized the benefits of foreign investment and the importance of preserving an open investment environment. This could see CFIUS send fewer reviews to phase II investigations, encourage greater use of short-form declarations, generate fewer RFIs during review, reduce the number of withdraw and refile cycles, and more commercially friendly approaches to mitigation.

Trade negotiations are also gathering pace. If the dust settles in favor of a more liberalized trade and investment environment – resembling, or even improving upon, the pre-tariff status quo – global investors could stand to gain.

Uncertainty reigns amid shifting U.S. trade policy

The Trump tariffs have introduced considerable uncertainty on global capital markets. Many investors may delay new U.S. investments until the outlook stabilizes – or a new administration takes office. Even investors seeking U.S. deals will face an American economy undergoing significant re-adjustment.

While the administration says it wants to attract investment, it may yet use CFIUS as a tool to advance broader trade objectives which could result in collateral damage to investment into the United States. CFIUS’ understanding of “national security” has already expanded in recent years. In a more assertive trade environment, the Trump administration could be tempted to use national security reviews to signal strategic priorities or apply pressure in negotiations – blurring the line between trade enforcement and investment screening.

World war tariff: Is the global trade conflict redrawing the FDI map?

For global investors, the implications of this new trade landscape – and the evolving role of CFIUS – merit close attention.

> While the administration says it wants to attract investment, it may yet use CFIUS as a tool to advance broader trade objectives.

Shifting perceptions: Will the Trump administration's trade policy alter the EU's view of U.S. investors?

The EU has long been a key destination for U.S. investors. The EU and its Member States have typically welcomed this investment, treating the U.S. as a trusted partner. U.S. investors have traditionally been considered low risk – on a par with those from the UK.

But the new U.S. tariff regime is straining transatlantic ties. If the EU comes to view the U.S. as an economic adversary rather than an ally, FDI scrutiny could tighten.

For now, most Member States' FDI authorities are adopting a wait-and-see approach as U.S. - EU tariff negotiations continue. Because tariffs and investment screening are not directly linked, a dramatic shift in how U.S. investors are treated seems unlikely – at least based on tariffs alone. U.S. investors will continue to be viewed as trusted partners for the time being. FDI regimes are intended to protect national security and public order so a broader realignment of geopolitical alliances under the Trump administration will have a greater impact than tariffs alone. Notably, growing government influence over private companies, and differing policy.

Diverging EU responses to U.S. tariffs

Still, because FDI screening is inherently reflective of national policy objectives, indirect effects cannot be ruled out. Reactions will vary: screening sits with national authorities, and different EU Member States will have different political and economic outlooks. The EU's new Anti-Coercion Instrument also provides a mechanism to respond collectively – including with FDI restrictions – if the bloc sees U.S. action as economic coercion.

Some EU Member States' regulators have confirmed that they are actively monitoring developments – and some have even indicated growing concern. A senior German official recently commented that their case-by-case approach allows flexibility in response to geopolitical shifts. While the official didn't confirm a policy change, they notably declined to rule out a tougher stance on U.S. investment in the future.

So, while the direct impact of U.S. tariffs on EU FDI screening may be limited for now, a more subtle shift in perception is possible – and could shape future decisions. Dealmakers should watch closely.

Retaliation with restraint: China's calibrated approach to foreign investment

Amid escalating trade tensions, CHina introduced a series of countermeasures in response to recent U.S. actions. Retaliatory measures have included 125% tariffs on U.S.-origin goods, export restrictions, and the addition of 17 American companies to its unreliable entities list in April – effectively cutting them off from Chinese markets. China's antitrust regulator, SAMR, has also announced antitrust investigations against two specific U.S. companies since early this year.

While many of these steps were not officially framed as retaliatory, they sent a clear signal: Beijing is ready to respond.

Yet the response has been carefully calibrated. Chinese authorities have sought to limit broader economic fallout and preserve business ties with the majority of U.S. companies operating in China. Notably, companies have been added to the unreliable entities list primarily for matters concerning China's national security and sovereignty.

At the same time, China has moved to reassure other foreign investors. On April 6 –two days after announcing the retaliation tariffs – the Chinese Ministry of Commerce, which is in charge of foreign investment policies, hosted a roundtable with over 20 U.S. companies, including Tesla, GE Healthcare, and Medtronic. The key message is to reaffirm that the foreign companies' legitimate business interests will be protected.

This message echoed earlier statements from President Xi Jinping during a March meeting with international business leaders, and aligns with China's broader 2025 Action Plan for Stabilizing Foreign Investment, published in February.

This two-pronged approach reflects China's competing priorities: the strategic need to stay open and attractive to foreign capital, and the political imperative to safeguard Chinese interests in an increasingly tense U.S.-China relationship.

Even after the U.S. and China agreed to roll back most tariffs following trade talks in May, the broader strategic dynamic remains unchanged. Foreign investors should expect continued policy nuance as China walks the line between economic openness and national security.

With thanks to Freshfields Brian Reissaus, Christine Laciak, Andrew Gabel, Ian Allen and Kate Applegate for their contributions to the U.S. update; Christoph Sickinger for the EU update; Ziqi Zhou and Freshfields RuiMin's Hazel Yin for the China update.

**Freshfields RuiMin is a Joint Operation between Freshfields and RuiMin Law Firm in China, which can engage directly with PRC regulators and offer formal Chinese law advice to both international and Chinese clients.*

Key takeaways

- **Tariffs are tilting the investment equation**. For companies exporting to the U.S., higher tariffs may make direct investment a more cost-effective route – particularly in sensitive sectors like autos, semiconductors, and healthcare.
- **CFIUS may become both more visible and more flexible**. The administration's America First Investment Policy could lead to a lighter-touch review process for favored deals – though political considerations may also increase unpredictability.
- **EU FDI scrutiny could evolve**. While formal restrictions on U.S. investors remain unlikely for now, a shift in political tone and perception – particularly if trade tensions escalate – could subtly influence screening decisions across EU Member States.
- **China's response is strategic, not sweeping**. Despite targeted retaliation against U.S. firms, China is actively reassuring foreign investors and doubling down on policy stability – an important signal for companies with a China footprint.
- **Geopolitics is now a key factor in deal planning**. Investors should factor in not just legal frameworks, but how political narratives and policy objectives may affect deal approvals across major markets.

Nippon Steel's Unprecedented Resurrection: Right Answer for the Wrong Reason

In brief

President Trump's directive to re-review Nippon Steel's acquisition of U.S. Steel – after it was blocked by the Biden administration – marks an unprecedented intervention in the CFIUS process and underscores how political priorities are shaping national security reviews." While the deal appears to be proceeding with revised mitigation terms, including a reported "golden share" arrangement, its handling reveals a growing willingness to subordinate the process to politics. Yet, key legal questions about due process and presidential authority remain unresolved.

Raised from the grave

Initially blocked by the Biden administration for purported national security concerns in January 2025 (with Nippon subsequently challenging the block in court), the deal underwent an unprecedented re-review at the direction of President Trump.

Trump's directive required CFIUS to reevaluate whether national security concerns could be mitigated). He ultimately revised Biden's order to lift the prohibition so long as the parties agree to and comply with a National Security Agreement (NSA) similar to a draft agreement that CFIUS has proposed to the parties, echoing President George W. Bush's nearly 20-year-old action accepting the high-profile Lucent Technologies / Alcatel NSA and merger following CFIUS review.

An unprecedented CFIUS process from the beginning

Leaks from the Biden administration's CFIUS process indicate that certain members of the Committee thought the rejection by that administration of Nippon Steel's proposed acquisition on national security grounds — unprecedented for a Japanese transaction—was led by politics, not national security. Key factors in the Biden administration's rejection of that transaction were the lobbying efforts of competitor Cleveland-Cliffs and the United Steelworkers union, whose leadership vocally opposed the deal during an election year.

While the Biden administration framed its opposition as a national security imperative for domestic steel production, many experienced observers believed the case for a national security risk arising from a Japanese acquisition was thin and the case for prohibition even thinner. Their view, instead, was that the decision was driven by winning the U.S. presidential race and appeasing labor special interest groups rather than addressing legitimate security risks. Biden notably articulated his opposition to the deal before CFIUS even first began its review of the transaction.

> President Trump's unprecedented intervention in the CFIUS process underscores how political priorities are shaping national security reviews.

President Trump's order that CFIUS conduct a de novo review of the transaction—after he too had come out against the transaction as a presidential candidate—was similarly unprecedented, with the rhetoric leading up to and surrounding the review underscoring the politicization of CFIUS's review of the transaction. Historically, once CFIUS completes its review, and the transaction is blocked by the president, the review outcome is considered final.

President Trump, following the CFIUS re-review, has now cleared the deal subject to a revised structure that includes a planned partnership between U.S. Steel and Nippon, the full details of which are not public. The deal purportedly also includes a perpetual "golden share," The Nippon clearance presents a potentially useful data point in the administration's America First Investment Policy, which notes that "Economic security is national security."

A politicized process results in a politicized outcome

Leading up to the Biden administration prohibition order there was extensive involvement by commercial stakeholders such as U.S. Steel competitor Cleveland-Cliffs – which made a failed $7bn bid for U.S. Steel in August 2023. Alongside the United Steelworkers union, which agreed to support Cliff's bid, the company engaged in extensive lobbying efforts to push President Biden to block the deal including engaging with leadership of CFIUS member agencies such as U.S. Trade Representative Katherine Tai. Nippon's legal proceedings alleged these actions amounted to an anticompetitive conspiracy to prevent the deal to monopolize critical domestic steel markets.

Like the Biden administration, Trump has focused on labor issues and presenting a perceived win for the administration rather than traditional national security concerns. Describing the negotiations at a June 2 rally at a U.S. Steel plant, Trump stated that "every time they came in, the deal got better and better and better for the workers ... I didn't give a damn about anybody else, if you want to know the truth."

Presidents typically refrain from commenting on live CFIUS reviews to avoid interfering with ongoing efforts by career staff to conduct their risk analysis and, as necessary, negotiate mitigation remedies. However, in a particularly high-profile case, the White House will be in communication with the Committee to be kept apprised of its work and make sure that the remedies it is developing are consistent with the broader policy goals and preferences of the President.

President Trump's public remarks give a window into the guidance that is likely being filtered down to the Committee. When considered alongside Trump's America First Investment Policy, these remarks seem to suggest that alignment with the administration's narrative (i.e., reshoring and rebuilding U.S. industrial capacity) may increase a deal's chances of the White House weighing in on the side of clearance in a particularly high profile transaction.

We may never know the actual substance of the final NSA that the Committee submitted to the parties on June 13, 2025, but it appears to include a number of politically favorable terms for President Trump, including roughly $11 billion in new investment and control of certain major decisions through a "golden share."

"Golden share", form over substance?

The description of some commitments supposedly sought by CFIUS of Nippon Steel – excluding the capital investments to be made in U.S. Steel – are consistent with terms that CFIUS frequently includes in NSAs to address supply assurance risks for critical defense programs. Others, including the requirement that the President consent to a change of name of the company, protections of employee salaries, and anti-dumping pricing, go beyond what is typically asked to mitigate national security risks. Further, taking the Administration's statements literally, it appears that in addition to effectuating them in an NSA, they will be memorialized in the form of a "golden share."

A requirement that a company actually issue a golden share as a condition of clearance is novel in the CFIUS context. Reporting indicates that the administration is not merely using the term "golden share" as shorthand for a bundle of governance rights. Rather, the U.S. government will perpetually retain a class of non-economic preferred stock that will provide government control over significant commercial decisions of U.S. Steel. This is highly unusual, as in recent history the U.S. government has only taken a share in ailing companies that played a significant role in the economy, like General Motors, Fannie Mae, and Freddie Mac during prior financial crises. Members of President Trump's own party have criticized China's use of "golden shares" as recently as last month.

Legal questions around the golden share structure

Such a structure raises meaningful legal questions: chiefly, whether the government's rights would derive from statute (as in a conventional mitigation agreement) or instead flow from its contractual rights as a shareholder. Treasury's Office of General Counsel will undoubtedly identify and analyze such complexities. Still, it is notable that the Trump administration appears willing to accept a degree of redundancy in exchange for political optics, specifically, the spectacle of securing a "golden share" rather than relying on a more conventional and less symbolically potent set of mitigation measures likely agreed to in the traditional NSA.

No clarity from the courts

The approval of the transaction mooted the petition for review of the Biden prohibition, resulting in no ruling from the court on whether CFIUS failed to provide the parties adequate due process or President Biden's order to prohibit the transaction was *ultra vires*. Such a ruling could have had significant implications on the CFIUS process, either through making it clear that even specious national security risks are shielded from judicial review or establishing critical guardrails to ensure that CFIUS remains focused on its national security mandate. While the CFIUS process itself remains unchanged, the transaction underscores how political context can elevate scrutiny – even in the absence of legal reform. Investors should continue to factor public sentiment and geopolitical narratives into their deal strategies.

With thanks to Freshfields Aimen Mir, Brian Reissaus, Christine Laciak, Colin Costello, Andrew Gabel, Ian Allen and Kate Applegate for contributing to this update.

Key takeaways

- **Expect the unexpected – but know it's rare**. The Nippon Steel/U.S. Steel case is highly atypical; most deals are unlikely to face similar political intervention.
- **Plan early for political sensitivity**. For deals with potential political exposure, early engagement with CFIUS counsel and strategic public affairs planning is essential – especially when competitors or unions may try to influence the review process.
- **Think beyond traditional national security**. Assess the broader industrial and economic role of the target business, and consider how the deal aligns with U.S. strategic priorities.
- **Structure matters**. Tailor deal terms – like efforts clauses or break fees – with CFIUS risk in mind, and be prepared to offer political or economic "sweeteners" that align with White House goals.
- **Optics can outweigh process**. In some cases, symbolic commitments (like a "golden share") may help secure approval even if substantively equivalent to standard mitigation terms.

Japan's foreign investment regime gets sharper teeth: Are investors ready for the bite?

In brief

A series of regulatory reforms and policy shifts have reshaped Japan's approach to foreign direct investment, signaling a more assertive stance on national security and economic resilience. From narrower exemptions and new core entity designations to sector expansions and call-in powers, we examine what these developments mean for global investors — and why even low-risk deals may now face closer scrutiny.

Evolving Foreign Exchange and Foreign Trade Act (FEFTA) enforcement

Over the past 12 months, Japan has stepped up scrutiny of inbound foreign investment, particularly in sensitive sectors, such as infrastructure, telecoms and high-tech industries. Authorities are applying the FEFTA with renewed intensity – a shift driven in large part by rising geopolitical tensions and growing concern over the security of critical supply chains. This trend mirrors broader global developments, most notably in the United States, where CFIUS has become increasingly assertive in reviewing foreign direct investment.

This shift in Japan shows no sign of slowing. A series of recent developments – examined below – suggests a regulatory environment that is likely to become more restrictive in the short to medium term, especially for investors seen as linked to foreign state interests or targeting strategic assets.

Under FEFTA, prior notification is required for foreign investments in companies operating in designated sectors deemed sensitive to national security. Other qualifying investments are subject to post-transaction reporting. While this framework has long been in place, recent reforms and enforcement patterns mark a clear evolution in Japan's approach.

Tightening of the scheme allowing exemptions from prior notification obligations

Japan recently amended its scheme for exemptions from prior notification for inbound direct investment, with changes promulgated on April 4, 2025 and entering into force on May 19, 2025. The amendment introduces two key developments. First, it narrows the scope of exemptions available to investors deemed to be under the substantial influence – or effective control – of foreign governments. Second, it broadens the range of companies classified as "designated core business entities," foreign investments into which are subject to mandatory pre-closing screening.

While the government has not publicly stated its reasoning, market observers suggest that the amendments reflect rising concern over minority shareholdings by Chinese investors in Japanese listed companies involved in sensitive sectors such as cloud computing and telecommunications infrastructure. The potential for such investors to access confidential information, including the locations of critical infrastructure assets, appears to have sharpened the focus on national security risks.

Limiting the scope of exemptions for certain investors

Prior to the amendments, foreign investors that were not owned or controlled by foreign governments could, under specific conditions – such as refraining from management participation – acquire up to 10% of listed companies in designated sectors without triggering a prior notification requirement. The new rules narrow this exemption regime considerably, introducing a tiered classification system that targets investors based on their relationship to foreign states.

Two categories of investors have been defined:

- **Type A investors** are those subject to foreign legal regimes that would, either explicitly or in practice, compel them to gather information for the benefit of a foreign government. These investors are now excluded from the exemption scheme altogether. Any acquisition of 1% or more of shares in a Japanese-listed company operating in a designated sensitive sector will require prior notification.
- **Type B investors** are not formally bound by such foreign laws but are considered to occupy a comparable position in practice. While they may still apply for exemptions, they face a high threshold to qualify. Notably, they are barred from using the exemption system when investing in "designated core business entities."

The Japanese Ministry of Finance addressed several questions raised during its public consultation and has issued a Q&A to offer practical guidance – particularly for foreign financial institutions that previously enjoyed blanket exemptions but now fall under either the Type A or Type B classifications.

Nevertheless, uncertainty persists.

How these rules will be applied in practice, and how they will interact with existing exemption schemes remains unclear. In many cases, individual engagement with the authorities may be required to clarify the ongoing validity of prior arrangements.

> "In many cases, individual engagement with the authorities may be required to clarify the ongoing validity of prior arrangements.

Designated core business entities

FEFTA already distinguishes between designated and non-designated sectors, with foreign investments in the former requiring prior notification and approval. Within the designated group, certain core sectors are flagged as posing heightened security concerns. The amendments build on this framework by introducing a new category: "designated core business entities" – a designation that applies not to sectors, but to specific companies.

These entities are defined under the Economic Security Promotion Act as "specific social infrastructure operators" and include major players in power, transport, and telecommunications — sectors already within FEFTA's core scope. Examples include Tokyo Electric Power Company, East Japan Railway Company, and NTT East.

This change is likely to affect market dynamics. Shares in infrastructure companies are typically attractive to foreign investors given their relative stability and reliable returns. But with the new rules in force, the regulatory burden attached to such investments has increased, particularly for investors previously able to operate under the radar. For those considering trades in these entities, the compliance calculus has become more complex.

Expansion of designated sectors

Beyond the most recent amendments, FEFTA has been subject to significant changes since 2023, reflecting Japan's growing emphasis on national security and economic stability. The Ministry of Finance has annually expanded the list of designated sectors that trigger prior notification for inbound direct investments and has updated classifications of different listed companies.

This expansion is both incremental and strategic. In recent updates, sectors such as fertilizers, machine tools, storage batteries and semiconductor manufacturing equipment have been added to the list. These additions underscore Japan's strategic focus on securing critical supply chains and enhancing economic resilience. As a result, the perimeter of regulatory oversight is no longer defined solely by conventional notions of strategic sensitivity. Instead, the focus has widened to encompass sectors essential to the functioning of Japan's broader industrial and innovation base.

Heightened scrutiny for western investors

The tightening of Japan's foreign investment regime has not been limited to investors from countries typically viewed as geopolitical rivals. Western investors, too, are facing increased scrutiny under FEFTA, with regulatory inquiries extending well beyond the formal exemption categories. Recent experience suggests that Japanese authorities – including the Ministry of Economy, Trade and Industry and the Ministry of Health, Labour and Welfare – are taking a more expansive view of national security risks. In particular, western companies with significant R&D operations in China have encountered detailed questions about the potential for sensitive information to flow offshore.

This approach mirrors the rationale underlying CFIUS reviews in the United States, which increasingly focus on limiting the flow of strategic commercial data to jurisdictions deemed high risk. For western firms, the implication is clear: a strong operational footprint in China may trigger closer scrutiny in Japan, even if the investing entity is otherwise considered low risk.

Increasing risk of call ins

As the list of designated sectors continues to expand, Japanese authorities appear increasingly willing to use their discretionary powers to call in transactions for review – even where formal thresholds or sector classifications are not clearly met. This shift reflects both a more assertive regulatory posture and growing dissatisfaction with the static nature of the designated sector list, which is sometimes criticized for lagging behind emerging national security concerns. The call-in mechanism provides a safety net for regulators, enabling them to scrutinize transactions that might otherwise evade prior notification obligations.

The healthcare sector offers a case in point. Policymakers have expressed concern over Japan's reliance on imported medical and biotechnological products, particularly from China, highlighting the vulnerability of supply chains in the event of geopolitical shocks. Even where specific products or technologies are not formally designated as sensitive, the sector is likely to attract heightened attention from FDI reviewers.

Japan's FDI playbook just got more complex

A more public example involves the proposed acquisition of Seven & I Holdings by Canadian-based Alimentation Couche-Tard. While ostensibly a consumer transaction, the deal has triggered debate about the national security implications of foreign ownership of Japan's ubiquitous convenience stores – viewed by some as essential elements of the country's social infrastructure. In a notable development, Seven & I Holdings' operations were reclassified from regular designated to core designated status shortly after news of the deal emerged, bringing them under closer regulatory scrutiny.

Together, these developments underscore the increasing unpredictability of Japan's FDI review landscape. Investors can no longer rely solely on sector designations to assess regulatory risk; a more nuanced understanding of political, economic and social sensitivities is now essential.

With thanks to Freshfields Kaori Yamada, Laurent Bougard and Hitoshi Nakajima for contributing to this update.

Key takeaways

- **Fewer exemptions, more questions**. Recent reforms have narrowed the exemption regime – especially for investors linked to foreign states – making early regulatory engagement essential.
- **New classifications mean new obligations**. Investments in "designated core business entities" now face heightened scrutiny, even in sectors traditionally seen as stable or low-risk.
- **Sector scope is expanding fast**. Japan's list of sensitive industries now includes areas like semiconductors, machine tools, and fertilizers – broadening the regulatory net for inbound deals.
- **Western investors aren't immune**. Operational ties to China or involvement in R&D may trigger enhanced review, even for investors from traditionally trusted jurisdictions.
- **Expect greater use of call-in powers.** Authorities are increasingly using discretion to review deals outside formal sector triggers – making political and social context a growing factor in FDI risk assessments.

Peeking into the black box: What UK court rulings reveal about national security reviews

In brief

Three years into the UK's National Security and Investment (NSI) regime, recent court decisions are beginning to illuminate how government reviews are conducted – and where legal challenges might gain traction. While courts remain highly deferential to ministers on questions of national security, they are showing more willingness to scrutinize procedural fairness. For investors, these rulings provide early guidance on how to anticipate risks, shape remedy discussions, and protect their rights in an increasingly complex and opaque regulatory landscape.

Balancing security and investment

As the UK government pushes forward with its industrial strategy to drive investment in growth sectors, attention has inevitably turned to the UK's NSI regime where a large number of investments need to be pre-cleared on grounds they do not raise national security concerns. Now three years in, the regime has been accused of imposing undue burdens on deals that don't raise genuine risks – and of lacking transparency around both process and outcomes. If these issues aren't addressed, they risk deterring investment in the very sectors the UK wants to strengthen.

But while the regime's core decision-making remains relatively opaque, a series of recent court rulings is offering a glimpse into how it operates. For investors, these rulings offer early guidance on how to approach transactions that may come under scrutiny – particularly around the procedural elements of the regime and how to maximize opportunities to engage. Alongside our recent report with TheCityUK and evidence to the UK parliamentary inquiry into economic security, these developments point to targeted reforms that could help the regime strike a better balance between attracting investment and managing national security risks.

Which deals are likely to raise national security concerns? Ministerial discretion is high – but there are ways to anticipate concerns

Challenging government decisions on national security grounds is notoriously difficult:

- grounds for judicial review are limited to illegality, unreasonableness/ irrationality, procedural unfairness or a breach of a right protected by the European Convention on Human Rights; and
- courts afford the government considerable discretion in national security matters.

Recent rulings confirm that judges will seldom find against the government on whether a deal creates national security risks – that is, what decision was made and whether it was unreasonable under the Wednesbury standard. Instead, successful parties are likely to rely on grounds related to procedural failures and question how the decision was made.

In the first NSI judgment, the court upheld the Secretary of State's (SoS) decision requiring LetterOne – an investment vehicle linked to sanctioned Russian oligarchs – to divest regional broadband provider Upp. Despite the already high bar for successful judicial reviews, the court's deference on the question of "what decision was made" is striking. The judgment contains multiple references highlighting the extent of the court's deference to the SoS's assessment, noting:

- On assessing national security risk: "Parliament has entrusted [that assessment] to the executive and not to the judiciary." The court described how the SoS personally took the decision "following assessments made by three other Secretaries of State" and concluded this conferred a high degree of democratic accountability. It went so far as to state that "the scope for the intervention of unelected judges is limited."
- The assessment of what measures are required to prevent, remedy or mitigate a risk to national security "involves matters of judgment and policy which the court is not equipped to decide."
- The court also afforded the SoS wide discretion in deciding whether to reimburse a party for financial losses upon divestment.
- The court also dismissed out of hand LetterOne's claim that the SoS's decision was Wednesbury unreasonable.

Compounding the challenge, national security proceedings are conducted using closed material procedures, limited disclosure and closed hearings, with parties represented by special advocates instead of their own counsel. Parties proceed with limited visibility – navigating, if not blindfolded, then certainly in a heavy fog.

Two important points for investors should therefore be front of mind when planning to invest in a strategic sector:

- **Be proactive:** Conduct thorough due diligence on the likely national security concerns, on which types of investor may, taking into account government policy, raise red flags, and on which target businesses need protecting in light of the geopolitical context and broader political priorities, including the current focus on economic security and resilience. Be prepared for limited interaction with government stakeholders on substantive risks once the review has formally started.
- **Know your rights:** Understand your procedural rights during the review process. Government and other public bodies are required to follow due process and ensure decisions are robust and based on all available evidence. This is where the courts have focused much of their attention – and where investors can draw the most practical insights.

What evidence is taken into account? The ISU's recommendations are founded on cross-government input

The Upp judgment lays bare some of the inner workings of the Investment Security Unit (ISU). Acting as a central hub, the ISU gathers information and views from across government before presenting its recommendations to the SoS decision maker – currently, The Rt Hon Pat McFadden MP. In Upp, the SoS considered, among other things:

- A "technical comment paper" from the National Cyber Security Centre (NCSC), analyzing how "owner influence" over a broadband network like Upp could pose a national security risk – highlighting concerns such as access to personal data.
- Ministerial letters from the Foreign Secretary, Home Secretary and SoS for the Department for Digital, Culture, Media & Sport (DCMS) recommending remedies, including divestment, after having been briefed by the ISU.
- A remedies assessment prepared for the SoS, outlining options – including divestment or restrictions on LetterOne's control of Upp – developed with input from across government, including the DCMS, Department for International Trade, Ministry of Defence, National Crime Agency, NCSC, and UK Government Investments.

Transparency challenges in national security cases

Crucially, these materials were not disclosed to LetterOne until the judicial proceedings following its appeal of the SoS' divestment order. Even then, only the "gist" of the key evidence relating to potential national security risks and effectiveness of different remedy packages is required to be shared.

In practice, parties may receive minimal detail on why a deal is deemed risky. While the ISU may invite representations during the assessment period, parties and their advisors are often left to infer the nature of the ISU's concerns when deciding how to respond. Importantly, the Upp judgment indicates this limited level of transparency – both in the ISU's reasoning and its reliance on input from across government – is unlikely to be considered as procedurally unfair by the courts.

Timing and framing the case. On deals raising potential national security risks, investors should carefully consider when and how to engage with government stakeholders, particularly if they have existing relationships – in the early stages of a transaction.

How restrictive are remedies likely to be? There is more room to influence remedies than risk assessments

While there may be limited opportunity to challenge risk assessments, parties have more scope to shape the remedy package if they engage constructively on the issues that need to be addressed.

In Upp, LetterOne was given the opportunity to make written representations on three occasions (two relating to remedies) and raise concerns at two ISU meetings. These representations are crucial to persuading the ISU and SoS that the least restrictive remedies can effectively mitigate identified risks.

When presenting remedy options, the ISU typically sets out the steps and actions it considers necessary and proportionate to prevent, remedy or mitigate any national security risk it deems to arise from the transaction. Each option is assessed against a range of factors, including:

- how effective the remedy is likely to be in preventing the national security risk;
- how likely the parties are to comply with any final order;
- how easily the government could enforce the remedies in the event of breach;
- the cost or burden on the government – for example, the resources required to monitor ongoing implementation of the remedies; and
- the cost or burden to the parties to the final order.

An effective strategy for shaping the remedies package will address each of these factors – demonstrating why a less restrictive remedy would be sufficient and why a more restrictive one would be unnecessary or disproportionate relative to the risk.

Can a divestment order be suspended pending an appeal? Only in exceptional cases

FTDI Holding – a company beneficially owned by five China-based limited partnerships – recently sought judicial review of a 2024 divestment order of its 80.2% stake in Future Technology Devices International (FTDI), a UK-registered semiconductor company specializing in USB technology,. Oral proceedings took place in May 2025, with judgment expected in the coming months.

Ahead of the main proceedings, FTDI Holding applied for interim relief to delay the start of the divestment process until the judicial review was concluded. In considering such applications, the court must decide:

- whether there is a serious question to be tried and whether damages would be an adequate remedy; and
- whether granting relief can be justified on the balance of convenience.

In cases such as these, the public interest in allowing the government to exercise its powers is given significant weight.

In closed proceedings, the SoS put forward evidence that the interim relief requested would prolong the period of the national security risk. The court agreed and refused the application.

Risk management in the face of uncertainty

The decision came despite the court acknowledging that the “rolled up” nature of the judicial review – where issues of standing and substance are heard together – meant that the proceedings would be quick and therefore the period of risk would not be unduly prolonged.

The judgment also noted that while the plan for divestment may not be finalized by the time of the judgment, that outcome could not be guaranteed.

In cases where a divestment order is likely, investors should be prepared to comply with its terms – including any divestment timeline – regardless of whether an appeal is ongoing or whether doing so may lead to a forced or distressed sale.

For non-notified deals, when does the call-in clock start? The “awareness” test could carry timing risk

An important procedural question raised in the FTDI case concerns the point at which the SoS is deemed to have “become aware” of a transaction for the purpose of triggering the six-month window to call in a non-notified deal. Under the NSI Act, a transaction may not be called in if more than six months have passed from when the SoS became aware of the transaction.

The court must now determine whether that six-month period begins when the ISU becomes aware of the transaction – or only once the SoS personally becomes aware. Given the opacity of the NSI process, a ruling in favor of the latter would considerably increase timing risk for investors and strengthen the case for making a voluntary notification.

If the court finds that the SoS’s divestment order is out of time and therefore unlawful, it would signal a willingness on the part of the court to limit the SoS’s powers on procedural rather than substantive grounds. Yet in a case where the national security risk assessment itself goes unchallenged, such a finding would raise difficult questions about the interplay between legal process, executive discretion and public interest.

Until the court offers clarity, investors would be well advised to treat the awareness criteria as a subjective one – and not to rely on public statements or indirect communication that may or may not reach the SoS personally.

Implications for investors

The courts have shown strong deference to the executive in matters of national security – both in the substance of decisions and in the process by which they are made.

Notwithstanding this “black box”, the Upp judgment shows that parties can still make their points heard. Strategic engagement with stakeholders across government, as well as focused and well-structured representations on issues – particularly remedies – in written submissions and in meetings with the ISU, can help shape outcomes.

The fact that the courts have granted permission to appeal on procedural fairness grounds suggests there may be scope for challenge – despite the high level of judicial deference (even though the claim in Upp was ultimately dismissed).

The outcome of the FTDI case will be closely watched. How the courts interpret statutory deadlines under the NSI Act could bring much-needed clarity – or introduce further uncertainty – for businesses facing potential scrutiny.

“Strategic engagement with stakeholders across government, as well as focused and well-structured representations on issues in written submissions and in meetings with the ISU, can help shape outcomes.

Key takeaways

- **Expect limited scope to challenge risk assessments**. UK courts show strong deference to ministerial decisions on what constitutes a national security threat – but are more willing to review how decisions are made.
- **Procedural rights matter**. Investors should focus on due process protections, including how evidence is handled, how remedies are structured, and the transparency of the review process.
- **Remedies offer a window for influence**. While risk assessments may be closed off, parties can shape outcomes by engaging constructively with the ISU and proposing effective, proportionate remedies.
- **Timing is a potential trap**. In non-notified transactions, uncertainty over when the call-in clock starts could pose significant timing risks – strengthening the case for voluntary notifications.
- **Strategic engagement is critical**. Early, informed engagement with government stakeholders and clear alignment with broader policy objectives can help mitigate risks – even in opaque and politically sensitive transactions.

With thanks to Freshfields Sarah Jensen, Nick English and Joschka Nakata for contributing this update.

Politics, power, and investment: Transatlantic developments in FDI control

In brief

Foreign investment regimes across major Western economies are entering a new phase. National security, economic resilience and political sensitivity are reshaping the rules — and the scrutiny. While Canada and Ireland introduce new mandatory regimes and expand their reach, the European Union is caught in a legislative battle over how much to centralize oversight and sharpen its collective response. These moves reflect a shared policy direction: more proactive enforcement, broader definitions of sensitive sectors, and a growing willingness to challenge deals that might once have sailed through. The sections that follow explore these developments in the EU, Canada and Ireland in more detail.

European Parliament and Council move in opposite directions on revamped EU FDI regime

In May and June 2025, the European Parliament (Parliament) and the Council each adopted their respective position on the European Commission's (Commission) proposal for a new FDI Screening Regulation (Regulation), introducing a series of proposed amendments. The proposal, first unveiled by the Commission in January 2024, aims to further harmonize and strengthen the screening of foreign investment across the EU. The Parliament's position focuses on reinforcing the Commission's role in EU-wide foreign investment screening vis-à-vis the Member States and expanding the scope of the regime. Meanwhile, the Council wants to strengthen the position of the Member States in foreign investment screening and cut back on obligations for them.

The main points of contention are the following:

Granting more powers to the Commission vs strengthening sovereign decision-making by the Member States.

Under the Commission's proposal, Member States would retain the sovereign right to decide on foreign investment screenings, with an obligation only to give "utmost consideration" – rather than follow – any diverging opinions from other Member States or the Commission, and to justify their decisions.

By contrast, the Parliament has proposed giving the Commission the authority to take over screening proceedings and adopt its own decision – either authorizing or prohibiting an investment – where there is disagreement between the host Member State and another Member State or the Commission.

Meanwhile, the Council not only rejects any idea of granting own decision-making powers to the Commission, but wants to further strengthen the position of Member States through a number of changes limiting the weight of the comments by the Commission or other Member States.

Expanding the list of sensitive sectors vs restricting mandatory screening.

The Commission has proposed to introduce a mandatory investment screening for foreign investments into companies participating in projects and programs of Union interest listed in Annex I of its proposal) or active in certain sensitive sectors (listed in Annex II of its proposal).

The Parliament proposes further expanding the Commission's already extensive list of sensitive sectors in Annex II. New additions include semiconductor manufacturing equipment and software components, data storage and processing, technologies and infrastructure for the transport sector, media services, electoral infrastructure, critical raw materials, and agricultural land exceeding 10,000 hectares. The Parliament has also added a substantial number of illustrative examples to clarify the scope of covered products.

The Council wants to introduce mandatory screening only for European companies developing, producing or commercializing goods listed on the EU's List of Dual Use Goods or the EU Common Military List. Activities in other sectors mentioned in Annex I or II would play a less significant role, as Member States would only have to consider the potential effects of a transaction on these sectors in their regular review.

Introducing mandatory screening for greenfield investments vs leaving it to the Member States.

The Commission draft left it to Member States to decide whether greenfield investments should be reviewable.

The Parliament's position would require screening where such investments fall within the list of sensitive activities – provided the transaction value exceeds €250m and the investor is deemed "high-risk" (e.g. government-controlled, sanctioned or previously subject to restrictive conditions). Notably, this would create a minimum notification threshold but would not prevent Member States from imposing broader notification requirements.

The Council supports the proposal to leave the decision to the Member States.

Harmonizing Phase 1 timeframes. All proposals would harmonize the length of a Phase I case. The Commission is suggesting 60 calendar days, the Parliament 35 and the Council 45. Both the Parliament and the Council propose easing requirements for applicants in multi-country transactions; rather than submitting applications to all relevant Member States on the same day, applicants would have a three-day window to do so under the Parliament's proposal and shall only "endeavor" to submit applications on the same day under the Council's proposal.

Limiting post-closing review. The possibility for Member States to initiate investment screening post-closing would be limited to 15 months after closing under the Parliament's proposal– marking a shift from the Commission's draft, which proposed 15 months as a minimum review period. However, the Parliament also proposes granting the Commission the power to initiate post-closing screenings on its own initiative. The Council wants to maintain the Commission's initial position.

Tightening scrutiny of foreign government links. Both the Parliament and the Council propose scrutinizing the links of investors to foreign governments more intensely. The Parliament's focus is on funding, governance rights and opaque structures, while the Council wants to increase scrutiny of informal means by which a foreign government or a non-state actor could gain influence on a European company like leveraging personal relationships, applying personal or political pressure and employing threats and other manipulative or deceptive practices.

Council refines FDI reform proposal

The proposal of the Council would also fix some key weakness of the Commission's initial proposal: First, where the Commission suggested seeing any investor who had been subject to prohibitions or mitigating measures in earlier foreign investment screening cases as a "high risk" investor (even when the mitigating measures were standard supply assurance commitments), the new Council wants to limit this to cases where mitigating measures had not been complied with. Second, the Council wants to introduce a clear exception from reporting obligation for internal restructuring which is currently lacking in many Member States.

Representatives of the Commission, the Parliament and the Council will now meet in the so-called Trilogue to negotiate a common legislative proposal. Given the contrary positions of the Parliament and the Council, the negotiations could take time to conclude – and in the end, the Commission's original proposal may be viewed as a middle ground. The legislative process is expected to take several months – but some hope that it will be concluded by the end of the year.

If the three institutions agree on a final text, the Member States would have at least 12 months to implement the regulation. The Regulation will undoubtedly only harmonize minimum requirements and the Member States will continue to have discretion in many aspects. It will therefore be key to see how the Member States implement the Regulation.

Ireland's new investment rules: Ticking the box, raising the bar

Why did Ireland implement an FDI regime?

Ireland implemented the Screening of Third Country Transactions Act 2023 (Irish Act) so as to meet its obligations as an EU Member State to implement the EU FDI Screening Regulation (Regulation (EU) 2019/1452). However, while the intention in introducing the regime was to 'tick the box' required by EU law, the Irish regime was ultimately drafted quite broadly. Therefore some transactions not caught by the EU FDI regulation will nevertheless be mandatorily notifiable in Ireland.

Inward investment and attracting FDI into Ireland has been – and remains – a key focus of Irish political and industrial strategy. Successive Irish governments have made it clear that having a practical, commercially focused and efficient FDI screening regime is needed to implement EU policy, but that FDI will continue to form an important part of the Irish economy – recent estimates indicate that 20% of all private sector employment is attributable to FDI.

What are its key features?

The Irish Act is designed to ensure that Ireland is equipped with the necessary legal powers to screen certain investments by third country (i.e., non-EU, EEA and Switzerland) undertakings and individuals that relate to particular critical sectors, inputs or technologies with an Irish nexus.

A notification to the Minister for Enterprise, Trade and Employment (Minister) is required where the below cumulative thresholds have been met. If a transaction is below threshold for any one of the below requirements, no filing is required:

- **Non-EU/EFTA investor**: A third country undertaking or a connected person is a party to the transaction;
- **Low transaction value**: The value of the transaction is at least €2m (or the cumulative value of the transactions between the parties in the 12 months prior to the relevant transaction is at least €2m);
- **Relevant transaction**: A transaction involves (i) a 'change of control' of an asset or undertaking in the state (linked to established merger control principles of 'control' or 'decisive influence') or (ii) a defined change in the percentage of shares or voting rights held in an undertaking in the state; and
- **Relevant matter/sector**: The transaction relates to, or impacts on, critical infrastructure, critical technologies or dual-use items, critical inputs including natural resources, access to sensitive data; and media (some of which are defined in Irish guidance).

What are the most important factors investors should consider before investing in Ireland?

Broad impact: Investors should be aware of the low jurisdictional thresholds, as well as the broad range of sectors covered by the Irish regime (with only limited guidance currently available making it difficult to exclude many transactions). This means that a large number of international transactions with an Irish nexus could require pre-completion approval in Ireland.

Transaction timelines: Transaction closings may be impacted by the relatively long clearance timeframe of 90 days (extendable to 135 days for more complex transactions).

Irish ministerial focus and powers: The Minister's primary focus in government is to develop industry/the economy and increase employment and this Department is seen as business-friendly. Any intervention, including the Minister's call in power which has a 15 month look back period from completion is only likely in clear cases that raise national security concerns.

Other regulatory regimes: The new Irish regime needs to be considered in parallel with other foreign investment regimes, as well as Irish and international merger control and media merger rules, in order to determine necessary approvals and deal timings.

> Investors should be aware of the low jurisdictional thresholds, as well as the broad range of sectors covered by the Irish regime (with only limited guidance currently available making it difficult to exclude many transactions).

How, if at all, will trade turmoil affect Ireland's use of its FDI regime?

Trade turmoil and geopolitical issues are not expected to influence Ireland's implementation of its nascent FDI regime with Ireland remaining very FDI focused. However, Ireland will follow, as with other EU Member States, the EU's recommendations and focus areas for screening, should these develop over the coming years.

Foreign investment in Canada: Elections and economic security

Recent changes to the Investment Canada Act (ICA) bolster the Canadian government's ability to review foreign investments before implementation. These changes signal that the national security regime will be increasingly used as a tool for the Canadian government amidst broader uncertainty around tariffs and trade tensions. In this context, and in the wake of a general election, which saw the re-election of Mark Carney's Liberal government, foreign investors should be aware of key recent and upcoming developments including:

- the impending introduction of enhanced enforcement tools, in particular pre-closing filing obligations for investments in sensitive technologies;
- the recent addition of "economic security" as a factor in whether an investment could be injurious to Canada's national security; and
- the possibility that investments in Canadian businesses will be viewed as predatory in the context of market fluctuations and economic uncertainty across the North American borders.

The most significant change will be the introduction of a pre-closing notification requirement for foreign investments in sensitive sectors, to allow a national security review of such investments prior to closing. This change will apply to all non-Canadian investors, regardless of whether they come from a country aligned with Canada. Currently notifications can be filed post-closing, and notifications are not required for minority investments.

Sharpening of investment review tools

Once in force, investments, including minority investments, in prescribed sectors will require a mandatory and suspensory pre-closing filing and be subject to a minimum 45 -day waiting period. The prescribed sectors are yet to be defined, but are expected to track the Canadian Government's Sensitive Technology List outlined in the Guidelines on the National Security Review of Investments.

Furthermore, on March 5, 2025 Canada updated these guidelines to indicate that economic security is a factor in the assessment of whether a proposed investment is injurious to Canada's national security. This change was announced in the heat of tariffs being introduced. In his statement the Minister of Innovation, Science and Industry indicated that revisions to the guidelines were motivated "[a]s a result of a rapidly shifting trade environment, some Canadian businesses could see their valuations decline, making them susceptible to opportunistic or predatory investment behavior by non-Canadians."

As mentioned, Mark Carney's incumbent Liberal party was re-elected on April 28, 2025. The campaign was focused on Canadian autonomy and independence and the imposition of tariffs. The Liberals included commitments in their policy platform about "strengthening the Investment Canada Act" and to "make more transactions reviewable." Given this focus, the ICA must be seen as a tool in the government's toolbox, which may be used during ongoing trade tensions.

> Foreign investors should be aware of the potential for heightened scrutiny of investments in Canada including from countries traditionally considered to be Canadian allies.

Within this overall context and the recent developments, foreign investors should be aware of the potential for heightened scrutiny of investments in Canada including from countries traditionally considered to be Canadian allies. There will also be greater focus on critical and sensitive technologies, through the upcoming pre-closing filing obligations. Engagement with the Canadian government may be required, even for post-closing filings, to ensure that investments do not appear opportunistic or predatory.

Key takeaways

- The EU is debating more centralized control– but friction with Member States remains. The European Parliament's proposal to expand the Commission's authority may not pass against the Council's objection, but it signals intent to tighten oversight across borders and broaden the definition of sensitive sectors.
- Ireland's new regime casts a wide net. Low thresholds and broad sector definitions mean many international deals with an Irish nexus may require pre-approval – even if they fall outside EU-level rules.
- Canada is pivoting to economic security. Recent reforms add a pre-closing filing requirement for investments in sensitive sectors and explicitly introduce economic security as a factor in national security assessments.
- Mandatory filings are on the rise. Across all three jurisdictions, previously voluntary or post-closing filings are being replaced by mandatory, suspensory pre-closing reviews – reshaping timelines and deal strategy.
- Even trusted allies are under the microscope. Investors from historically friendly jurisdictions can no longer assume a smoother path – regulators are increasingly concerned about supply chain resilience, economic and technological independence, and political optics.

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