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Thought leadership

Trade tensions and supply chain resilience are reshaping FDI screening

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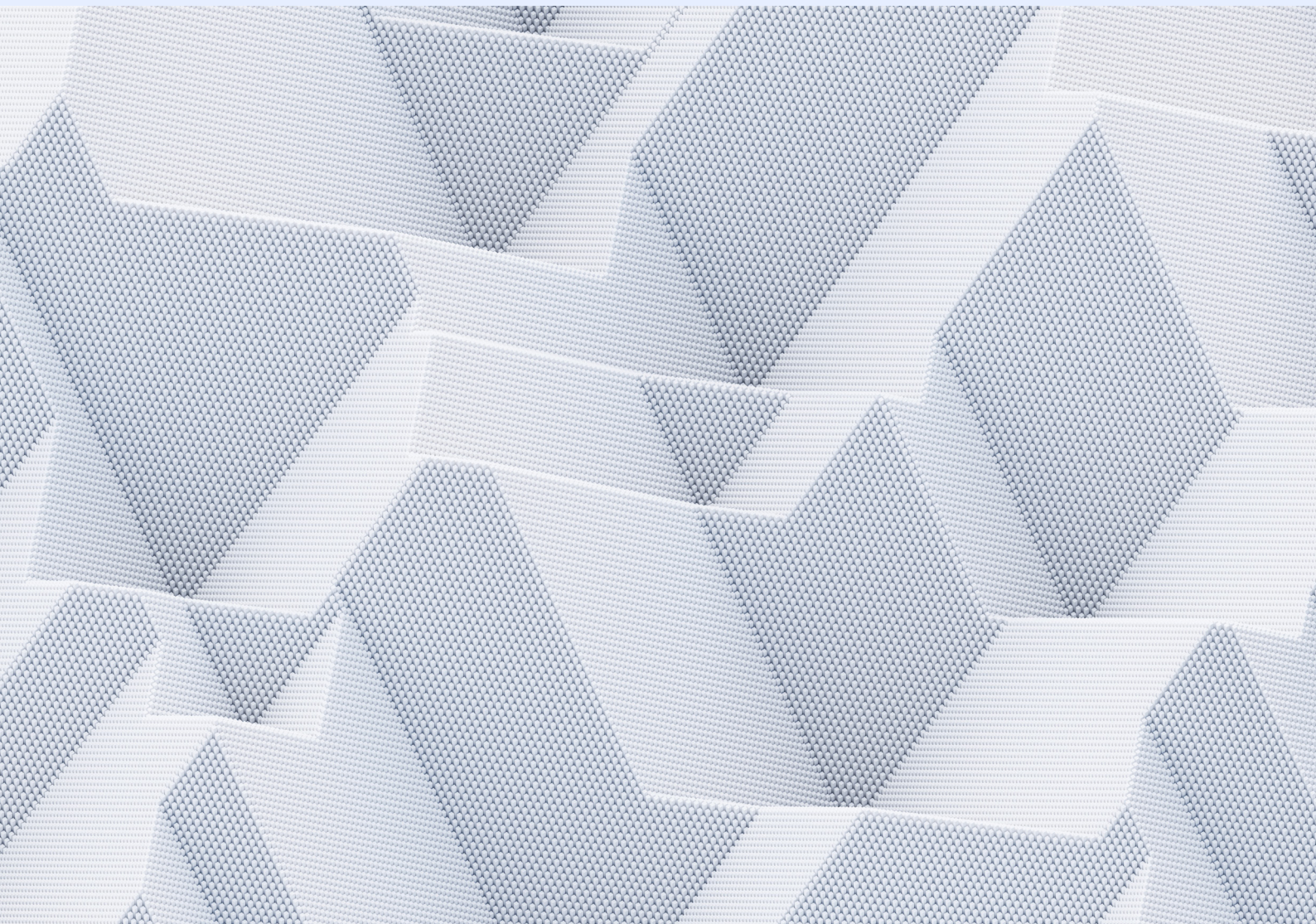

Trade tensions and supply chain resilience are reshaping FDI screening

Key takeaways

1. Governments are applying greater scrutiny to investments involving critical technologies, supply chains and strategic assets, making FDI screening increasingly important in cross-border deals.
2. Longer review timelines, expanding regulatory regimes and growing political intervention are making cross-border transactions more complex, uncertain and resource-intensive.
3. Investors must assess foreign investment and national security risks at the outset of a transaction and determine how best to mitigate them.

Foreign direct investment (FDI) and national security screening is now a central feature of global M&A deals. As geopolitical and trade tensions rise, governments are increasingly focused on protecting critical technologies and strategic capabilities. In this briefing, we examine how review timelines are lengthening, more deals are subject to remedies, and some are being blocked altogether – even those involving traditionally friendly jurisdictions. We also look at the evolving regulatory landscape, from new screening regimes and the EU's updated framework to an evolving US approach to the Committee on Foreign Investment in the United States (CFIUS) and outbound investment controls.

"FDI screening is no longer a niche issue. It is a core deal risk that investors need to factor in from the outset."

Domonic Ross
Partner

How jurisdictions are adapting their FDI regimes

Governments around the world are recalibrating their foreign investment regimes in response to geopolitical tensions and supply chain concerns. Although approaches vary by jurisdiction, the overall direction is clear: greater focus on critical technologies, strategic assets and national resilience.

The US – a pro-investment stance but continued scrutiny

The Trump administration is actively encouraging foreign investment to strengthen the US's leadership in technology as well as support the US industrial base and the wider economy. It is also encouraging parties to engage early with CFIUS on transactions that may raise national security considerations – and it is also looking at improving CFIUS's levels of customer service and efficiency. At the same time, certain deals are encountering greater scrutiny.

"CFIUS issues need to be carefully assessed early and strategically managed throughout the deal because when they arise, they can be very disruptive and have the potential to frustrate deals. That said, most transactions are cleared without mitigation," says Karalyn Mildorf, a Clifford Chance Partner based in Washington, DC.

Australia and Asia Pacific tighten and streamline foreign investment rules

Australia is positioning itself as a major destination for foreign direct investment. With productivity falling, FDI is seen as critical to sustaining economic growth. This focus was reinforced in the recent federal budget, which prioritised faster and more predictable approval processes to encourage investment. Reforms aim to streamline the regime by reducing barriers for low-risk transactions while ensuring rigorous scrutiny of high-risk deals.

"Recent changes include Treasury removing certain notification requirements for low-risk investments such as investments of small percentages with no change of control."

"Recent changes include Treasury removing certain notification requirements for low-risk investments such as investments of small percentages with no change of control. At the same time, tax oversight is tightening, ensuring that multinational enterprises comply with Australia's taxation laws," says Ryan Draper, a Clifford Chance Counsel based in Sydney.

Ryan Draper
Counsel

Australia is not alone in this approach. Across Asia Pacific, scrutiny of foreign investment is increasing. Japan, for example, recently introduced a new bill to expand the scope of its FDI regime – bringing indirect acquisitions of Japanese companies in scope for the first time.

EU moves to align fragmented foreign investment regimes

There is no single 'one-stop shop' in the EU – each Member State operates its own FDI regime, leaving investors to navigate multiple systems that are evolving and generally expanding in scope. The EU is trying to harmonise these different regimes through a revised FDI Screening Regulation. This introduces a number of changes, including mandatory filing regimes across all Member States, a minimum scope and new call-in powers.

"Some changes will benefit dealmakers," says Caroline Scholke, a Clifford Chance Partner based in Düsseldorf. "Clearance times should fall, with a maximum 45-day Phase 1 review period and fewer cases subject to the full cooperation process between Member States and the Commission. On the negative side, some changes will increase complexity. Many states will need to expand mandatory regimes to meet the minimum scope and some will introduce call-in powers for the first time. The rules will also broaden the range of non-EU investors seen as higher risk, including those from jurisdictions with weak anti-money laundering frameworks or opaque ownership structures."

The regulation has been approved by the European Parliament and is expected to receive Council approval by June or July this year. It will apply 18 months later, likely from late 2027 or early 2028, although member states may implement changes sooner. There are various other legislative initiatives the EU is proposing to protect domestic industries, such as the proposed Industrial Accelerator Act and the Net Zero Industry strategy.

UK to refine investment screening regime

The UK government has confirmed changes to sectors subject to mandatory screening. Most are minor refinements, but two stand out: the inclusion of water supply and a clearer definition of AI businesses, which should reduce the number of filings.

Despite this, the regime remains broad. In the last financial year, 1,142 transactions were notified to the Investment Security Unit. Two of the newly refined sectors are critical minerals and semiconductors, which reflects a focus on supply chain resilience and the UK's desire to retain influence over key inputs. The regime is distinctive in that it applies to both domestic and foreign investors, maintaining control over sensitive assets across the UK supply chain.

"The one change that everybody really wants is a sensible exemption for intragroup transactions, because there is currently a huge volume of completely pointless filings that have to be made for routine corporate reorganisations and refinancing transactions. None of these deals have any possible national security implications," says Nissim Massarano, a Clifford Chance Senior Associate based in London. "The good news is that the government has signalled that changes are imminent," he says.

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Nissim Massarano
Senior Associate

How do these UK developments affect the approach to deals? FDI risk is treated differently from merger control, and deal terms are evolving accordingly. We are seeing more tailored obligations, with buyers less willing to accept broad 'hell or high water' commitments given the uncertainty and limited predictability of FDI regimes. Financial thresholds are used less often. Instead, buyers must ensure their business plan aligns with potential obligations. Some agreements also define specific obligations the buyer will not accept, similar to merger control carve-outs, such as restrictions affecting other portfolio companies.

Finally, there is generally less concern in FDI about detailing these commitments in agreements as many jurisdictions, including the UK, do not require transaction documents to be submitted to the regulator.

Navigating government engagement in FDI reviews

Effective engagement with authorities depends on knowing when to be proactive, when to hold back and how each regime operates in practice.

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Karalyn Mildorf
Partner

In the US, timing is crucial. "Anticipating sensitivities, potential remedies and how these may affect the investor's goals is essential to protect the client and ensure they achieve the intended deal outcome. Every transaction is different, but understanding, assessing and addressing these issues is one of the most important parts of our role as CIFUS lawyers," says Karalyn Mildorf.

Engagement with CFIUS can be helpful on complex or sensitive transactions. CFIUS review is confidential and largely opaque. It deals with classified information and CFIUS rarely shows its inner workings. Much depends on experience to anticipate risks, ask the right questions and prepare effectively. The aim is to conduct careful diligence and avoid surprises. Where CFIUS is relevant, it is important to identify potential issues and develop a bespoke strategy early, especially for transactions likely to attract more interest.

In some cases, it can help to co-ordinate with a client's government relations team to ensure consistent messaging and manage the broader narrative. However, rather than traditional lobbying, the focus with a CFIUS review is generally more on direct engagement: speaking with officials, addressing questions, explaining the transaction and discussing its benefits (for example, to the US economy and national security). The administration actively encourages early engagement, particularly where there may be sensitivities, to help identify solutions. "Ultimately, the approach depends on the deal. Some transactions are straightforward and require only a light touch. Others demand a more proactive strategy, with careful planning to manage risks effectively," Mildorf says.

In the EU, the approach varies by jurisdiction and needs to be considered on a case-by-case basis. “In Germany, for example, The Ministry for Economic Affairs and Energy discourages direct engagement by parties. It often creates unnecessary noise and pressure from higher up the hierarchy and can actually harm your clearance prospects or at least delay the clearance timeline,” says Caroline Scholke.

In Australia, government engagement can help progress a review but only when used in the right circumstances. Over time, repeat investors may develop established government contacts, which can be used selectively; for example, where a transaction faces extended delays rather than the routine interactions. “Sometimes it can slow the process,” says Ryan Draper. An investor’s reputation with the Foreign Investment Review Board (FIRB) – including its case officers – is critical, as recent reforms prioritise streamlined approvals for known and trusted investors. In practice, FIRB focuses on substance over form, placing less weight on passive upstream ownership and more on whether a transaction delivers a net benefit to Australia.

In the UK, there is a clear distinction between formal lobbying, which must be handled carefully, and understanding the political context. “That means identifying where concerns actually lie, as this is rarely clear from the agency itself and assessing the probable outcome,” says Nissim Massarano.

However, lobbying does not provide certainty. Even where parties engage early and receive informal support, outcomes can change. For example, when Dutch-Chinese firm Nexperia acquired UK semiconductor manufacturer, Newport Wafer Fab, it engaged with the government and received initial positive signals yet was later required to unwind the deal as the political climate shifted. This reinforces the importance of robust contractual protections. While a strong pro-investment narrative and early engagement are important, parties must remain alert to potential concerns and plan accordingly.

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Partner

Longer timelines, greater uncertainty

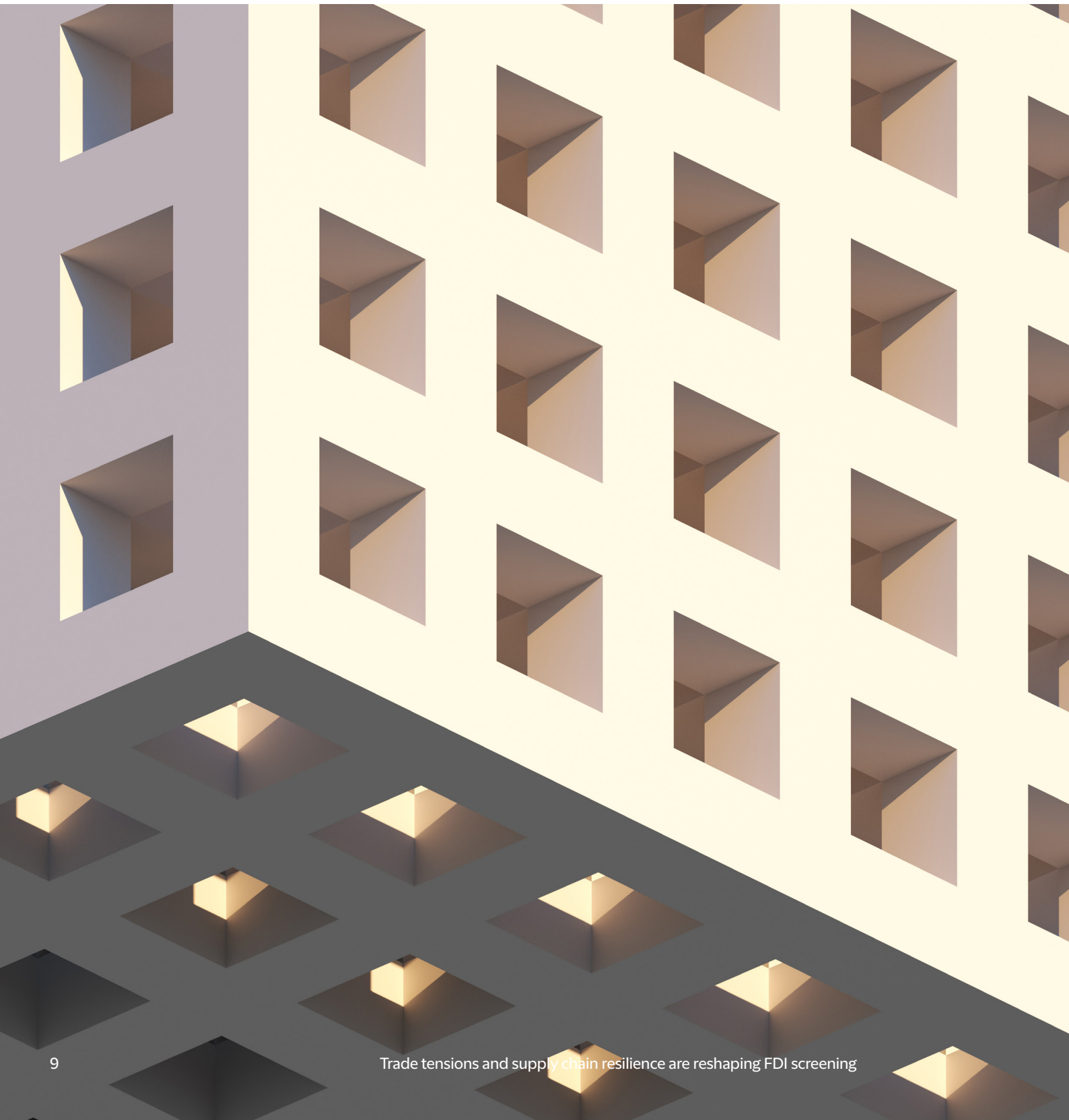
In many jurisdictions, clearance is becoming more complex, taking longer and is less predictable. In the EU, rising political sensitivity means that more cases involve a wider set of government stakeholders, which causes delays. At the same time, the continued rollout of new regimes, including in Cyprus, Greece, Croatia and Bulgaria, alongside forthcoming frameworks in Switzerland and Ukraine, is adding process and uncertainty. These newer regimes are typically less predictable and often slower as authorities establish their approach.

The revised EU FDI Screening Regulation may help at the margins with its introduction of a 45-day phase one review and a more targeted cooperation process. However, member states retain broad discretion to delay timelines through information requests or incomplete filings, limiting the overall impact.

Delays are also evident in the UK and a rising number of deals require remedies or face prohibition. The main bottleneck is the time taken for the Investment Security Unit to accept filings as complete, which has increased from around one week to closer to three weeks. Timelines are also less predictable than in merger control. Authorities can stop the clock, including automatically when third-party information requests are issued during phase two, often with limited visibility for parties. This can materially extend review periods.

CFIUS timelines have been significantly disrupted by recent US government shutdowns, which pause statutory deadlines and halt formal acceptance of new filings entirely. This has created a backlog and reduced predictability. Although there is a strong policy focus on improving efficiency and reducing reliance on withdrawals and refilings, progress has been constrained in practice. Since the most recent shutdown, filings are progressing again, but the full impacts of the backlog remain to be seen.

Meanwhile, Australia is bucking the trend. Recent reforms have accelerated approvals for low-risk investments, with FIRB targeting a 30-day turnaround for some 50% of those applications. This has freed up resources for more complex reviews. Extended timelines of six to nine months, more common in the past, are now less typical.



“Friendly” deals now face some resistance

Even transactions involving allied investors can attract scrutiny where national security, supply chains or political sensitivities are in play. Deal risk is less about investor origin and more about the nature of the target and its strategic relevance. Transactions are more likely to face scrutiny where they involve assets that could be relocated offshore, form part of critical supply chains or provide governments with potential leverage in trade or geopolitical disputes. Sectors such as critical minerals, semiconductors and advanced technologies are particularly exposed. “Outcomes will depend heavily on the specific facts of each deal and require careful handling,” says Massarano.

In the US, scrutiny has intensified in some deals even for allied investors, particularly where transactions involve businesses that supply the defence industrial base. Supply chain resilience, munitions capacity and control over key inputs are central concerns, and there is clear willingness not only to mitigate but, in some cases, to block particularly sensitive transactions.
“We are also seeing heightened scrutiny of transactions involving sensitive and more advanced technologies as there is a focus on maintaining US technological leadership,” says Karalyn Mildorf.

In Australia, FIRB operates largely out of public view and only a small number of cases become public, typically where national security concerns are acute. In May 2026, six investors based in China, Hong Kong and the British Virgin Islands were instructed by the Australian government to divest shares in mining company Northern Minerals.

Heightened focus on “non-friendly” capital

Private equity investors are increasingly factoring foreign investment risk into deal strategy from the outset. This includes early assessment of whether limited partner composition could raise issues and how best to mitigate them. In most jurisdictions, the presence of a Chinese or state-owned LP does not of itself create a barrier. Regulators generally recognise that LPs do not exercise control over portfolio companies or have access to sensitive information. Concerns are likely to arise only in exceptional cases; for example, where an LP holds a significant stake in the fund or has rights that could influence investment decisions.

That said, disclosure requirements are tightening. LP identities are increasingly requested as part of FDI reviews, particularly in sensitive sectors, and this can extend timelines and increase scrutiny. “In Germany, for example, authorities frequently seek information on LPs in higher-risk transactions, even where their involvement is not itself subject to notification. This creates practical challenges where LPs are reluctant to be disclosed and requires careful strategic management,” says Caroline Scholke.

In the UK, the Investment Security Unit has also stepped up its focus on LP investors, typically requesting details where an LP holds 5% or more. While this has not, to date, resulted in deals being blocked at these levels, it underlines that LP composition is firmly on the regulatory radar. In Australia, the position is evolving. The key distinction remains between private foreign investors and foreign government investors, with the latter subject to more stringent review. Recent reforms are shifting the regime towards a more proportionate approach, limiting notifications to cases involving material influence or control and reducing the burden on private equity investors.

Regulatory risk expands beyond FDI

Alongside FDI screening, governments are using a wider set of national security tools that can affect transactions in parallel. In the EU, the Industrial Accelerator Act (IAA) intends to boost EU low-carbon industrial products and net zero technologies. The new regime would apply another layer of screening to foreign investments in certain strategic sectors, including batteries, electric vehicles, solar and critical raw materials. Large deals in these areas could face multiple overlapping regimes, each with its own tests, timelines and remedies. Alongside this, sector specific measures such as the EU ports strategy point to a more interventionist stance around state-linked investments in European ports.

In the US, CFIUS remains the central mechanism, but it now sits alongside a growing suite of national security regulatory regimes. These include targeted rules addressing certain data transfers, outbound investment, sensitive technology transactions and supply chains. Longstanding frameworks, such as Team Telecom review for certain deals involving targets with US Federal Communications Commission licenses and foreign ownership, control or influence (FOCI) mitigation for cleared companies continue to apply in parallel. The result is a more fragmented landscape where multiple regulatory regimes may need to be navigated simultaneously.

A notable shift is that national security is not just as an issue that could cause a merger to be blocked or subject to remedies but can also be used as justification for clearing a deal that might otherwise have raised antitrust issues. “The European Commission has just released draft revised guidelines for how it will assess mergers under the EU merger regulation. The most significant change is a new openness to considering the benefits of mergers to include matters such as supply chain resilience,” says Nissim Massarano.

Outbound investment screening

From the US side, the US Outbound Investment Security Program (OISP) took effect in January 2025, and it has become a diligence and compliance issue across a wide range of transactions. “Although often called ‘reverse CFIUS’, it is very different. There is no review or approval process. If a transaction is covered, it is either prohibited or requires notification. A notification is just that, not an approval, and is not suspensory. In reality, this is therefore mainly a compliance exercise: determining whether the rules apply, then ensuring proper compliance and documentation. The regulations also impose specific diligence obligations,” says Karalyn Mildorf.

The regime is still new but expanding. It was always understood as likely to be a starting point rather than an endpoint. In December 2025, the OISP was codified into law through the COINS Act. This introduces certain changes, notably expanding the scope of covered technologies. Currently, the focus is on US investment benefiting China in semiconductors and microelectronics, quantum information technologies and certain AI systems. The COINS Act adds high performance computing, supercomputing and hypersonic systems, and allows for further expansion. “The key takeaway is to track these developments closely. Updates under the COINS Act are expected in early 2027. Companies should ensure their compliance and diligence processes keep pace as the programme evolves,” she says.

Europe is still at an early stage. Last year, the European Commission asked member states to review outbound investments in critical technologies and assess related risks – focusing on advanced semiconductors, AI and quantum technologies as the most sensitive areas. Member states are due to publish a comprehensive report by the end of June. “Only then will the Commission and member states decide whether and what further action is needed, so progress is likely to remain gradual,” says Caroline Scholke.

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