Changes in Foreign Direct Investments – Part II

10 September 2020

by Anna Monteiro

As a follow up to the blog published on 8 June, foreign direct investment oversight continues with several countries issuing new rules or extending previously established rules. While much of this stems from COVID-19 and the uncertainty of market stability, it also speaks to the lack of trust governments have for their foreign counterparts.

Since 2019 the U.S. has been tightening its oversight of foreign investment into the U.S. with particular focus on China. The treasury department cites Beijing's public plan to be the global leader in artificial intelligence by 2030 as being one of the drivers for their concern and rightly so. Gone are the days when the U.S. government developed its own military technologies, the vast majority of these now happen in the private sector for commercial applications. Some experts believe that rapidly developing technologies like machine learning, quantum computing, autonomous vehicles, robotics, and biotech will dramatically transform current military concepts and capabilities which could trigger major changes in the character and conduct of war thusly affecting US security.

The latest development, is the Executive Order by the White House on 7 August highlighting the collection of U.S. users' personal, proprietary data from WeChat and TikTok and ultimately the Communist Chinese Party as a real threat to U.S. security. The EO goes further to order ByteDance (the owner of WeChat, TikTok) is to divest all interests, rights in assets, properties, data obtained, derived in US, certify in writing that all steps taken fully, permanently within 90 days. Potential acquirers in the U.S. are lining up as the clock, tick-toks.

Elsewhere in the world, **France's** government issued decree 2020-892 of 22 July relating to the temporary lowering of control threshold for foreign investments in French companies whose shares are admitted to trading on a regulated market. This decree made it possible to lower from 25% to 10%, the threshold for the acquisition of voting rights likely to trigger control in French companies carrying out sensitive activities.

Austria's government issued rules for its Investment Control Act on 24 July. The Act establishes the investment control committee as well as, criminal and civil law provisions, including administrative penalty provisions. Section 3 on EU cooperation, section 19(1)3, 19(2) enter into force on 11 October. All other provisions come into force on the day of approval for consultation in federal law gazette.

On 31 July, **Australia's** government issued the Foreign Investment Reform Bill 2020 (protecting Australia's national security). This exposure draft bill gives effect to major reforms to the Foreign Acquisitions and Takeovers Act of 1975. Exposure draft bill includes provisions for new national security powers, integrity and technical amendments, and provisions that will improve compliance and enforcement.

Mexico's government, CONAMER issued its intent of requiring foreign investment registry in June and published a draft on new versions of templates on 4 August. Registration must be made using the approved forms and accompanied by supporting documentation specified in those forms, thus, the draft resolution aims to harmonize procedures.

Most recent, is **Brazil**'s government publishing BRA CB resolution 4.852 on 27 August which provides rules on foreign investments. This amends arts 2, 4 of reg in annex I to res 4.373 of 29 September 2014 on investments by non-resident investors in Brazil in financial and capital markets. Further, Art 2.3 now states that BRZ CVM will regulate the registration in item II and may even exempt the non-resident individual investors from that obligation. This resolution comes into effect on 1 October 2020.

Following on its market volatility measures implemented in March, **India's SEBI** announced an extension until 24 September. These measures included the tightening of short selling, stating that short positions in index derivatives of any entity, including foreign portfolio investors (FPIs), proprietary traders, mutual funds and clients (retail and high net worth individuals) should not exceed their stock holdings. In addition to this, SEBI has shortened the lag time from 30 days to 15 days for its daily reporting of money market securities transactions and has provided a new template.

In similar fashion, **New Zealand's** government also announced that it would keep its *emergency notification regime* in the *Overseas Investment Act 2005* in effect for 90 more days to protect New Zealand's national interest. This requires foreign investors to notify an intention to take a controlling investment in any New Zealand business, if that results in more than a 25% ownership interest, or increases an existing interest to or beyond 50, 75 or 100%.

Denmark's FSA is first, to my knowledge, to require U.K. investment firms to acquire a license to conduct business post-Brexit. UK investment firms must apply to the Denmark FSA for license under section 33 of Financial Business Act if they wish to continue offering cross-border investment services in Denmark. UK firms wanting to apply for a license must use a special form, available on DEN FSA website from 14 September 2020, the form will be accompanied by guidelines. It would be prudent for companies to apply for a permit before 15 October 2020.

Just before hitting the submit button, the **U.K.**'s CMA issued a consultation on proposed guidance setting out powers and procedures used in cooperation mechanisms under EU *foreign direct investments* (FDI) regulation. Temporary measures are in place until the end of the transition period. Responses to the consultation are requested by 18 September 2020.

As the year 2020 enters into its final months, and so too does the Brexit transition period, we can expect to see more countries outlining their procedures for U.K. firms to continue doing business within their borders. And as the world looks towards 2021 with the hope of a vaccine, we can also expect to see a continuation of regulatory tightening and oversight.

About Solutions Atlantic: Solutions Atlantic is the market leading provider of shareholding disclosure solutions to the global financial services industry. For nearly 20 years, its Regulatory Reporting System (RRS) has been at the forefront of global shareholding disclosure obligations and currently supports a client base having over $7.5 trillion in aggregated assets under management. With regulatory rules for over 100 jurisdictions, RRS leads the way in complete workflow automation including monitoring, alerting and generating submission-ready disclosures reports. Solutions Atlantic serves a global customer base and is headquartered in Boston, MA.