Rounding out Foreign Investments for 2020

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Now that we have seen a close to 2020, let's take a look at foreign investment changes around the globe. Following on from my 2nd installment in September, foreign investment regulations have continued to tighten in the more democratic nations and loosen in those less so.

In November, the **UK** government introduced the National Security and Investment Bill, which according to the official press release, "will modernize the government's powers to investigate and intervene in potentially hostile foreign direct investment that threatens UK national security. To help with the understanding of the proposed Bill, the government has issued additional factsheets and flowchart outlining the process for notifiable acquisitions which has been proposed as 15% or more of the votes or shares in an entity.

In mid-October 2020, the **EU** provided Member States with a framework to be applied to the screening of foreign direct investments into the Union on the grounds of security or public order, and for a mechanism for cooperation between Member States and the Commission. While this EU Regulation provides a framework, it does not provide for a centralized EU foreign investment screening process, nor does it standardize existing national screening mechanisms.

Following on from the EU Regulation, several countries: **Finland, Latvia, Poland,** and **Slovenia** have implemented 10-20% thresholds to initiate foreign direct investment screening. Others, like **Hungary** and **Italy** have extended existing regulations thru February 2021 and 30 June 2021 respectively.

Effective 19 November 2020, **Spain** extended its FDI rules to include investments by EU and EFTA investors and until 30 June 2021, investments, whereby 10% or more share capital is acquired in a Spanish company that operates in a strategic sector will need prior authorization.

As previously reported, **Australia's** government issued the Foreign Investment Reform Bill 2020 (protecting Australia's national security) in July 2020 and it passed into law on 9 December 2020. While this went into effect on 1 January 2021, there has been no publication of the associated guidance notes and regulations as to the specifics of its implementation.

Rounding out restrictions is **Oman**, who released its current list of activities (PwC, 30 Dec. 2020) that are prohibited by foreign investment.

Elsewhere, there have been a handful of countries that have shown some loosening of their restrictions on foreign investment, namely **China, India, UAE,** and **Vietnam**.

In early November 2020, **China** combined its QFII and RQFII programs. Although the limits for investing have not changed, the requirements for becoming a qualified foreign investor have been simplified. But, China also implemented national security rules consisting of [23 Articles] for foreign investment. These rules establish a foreign investment security review agency to undertake the daily review of foreign investments with specific attention to those in military industry, and national defense. Also, looking at investment in important, agricultural products, energy and resources, major equipment manufacturing, transportation services, IT and internet products and other key technologies to name just a few of the identified sectors. These measures come into effect on 18 January 2021.

In early December, the **Indian** Ministry of Finance, has relaxed restrictions on foreign investment in defense companies. In certain cases, foreign investment can now be 74 percent which is up from 49 percent.

Continuing in Asia, as of 1 January 2021, under its 2019 Law on Securities, **Vietnam** allowed for an aggregate 49% cap on foreign ownership of public companies unless another cap is specified. It also recognizes the EU-Vietnam Trade Agreement by increasing ownership caps in the Telecoms sector for EU foreign investors come the year 2025. Other increases appeared in Aviation from 30% to 34% and within Rail sector an increase to 51% for ASEAN investors.

Closing the year is the **UAE,** who under amendments to their Companies Law allows foreign investors to establish and own 100% of LLCs and joint stock companies. The amendments also removed the requirement to have a local service agent who is a citizen of the UAE as part of the foreign investor company/branch.