



Hand-out to the webinar:

**Summary of the system of state intervention in foreign investments
in selected jurisdictions**

EMEA – Americas – Asia – Oceania

Locking the deal-making gates: the world turns protectionist

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Locking the deal-making gates: the world turns protectionist

Introduction:

When the Covid-19 pandemic began to unravel, the IBA Closely Held and Growing Business Enterprises Committee had to eventually cancel the 6th Global Entrepreneurship Conference which was planned for 20/21 May 2020 in Amsterdam.

The organisers of the conference, first and foremost Marco Rizzi, with the help of many fellow members of the committee, the IBA Corporate and M&A Committee, IBA European Regional Forum, IBA Latin American Regional Forum, IBA Law Firm Management Committee and the IBA Young Lawyers' Committee, quickly managed to set up a webinar as a substitute for the conference.

Within the framework of the webinar, our session on state influence in foreign investments presented the worldwide protectionist tendencies that have developed in recent years, the influence the Covid-19 crisis had on these and the practical consequences this has on the deal-making process in M&A transactions.

Rather than having panellists recite laws and articles in our webinar, we decided to give a summary of details in this hand-out and extend its area of application to additional countries around the globe. This document therefore integrates the content of the webinar and is, hopefully, on a stand-alone basis an interesting and useful guide, apt to give the M&A advisor in a cross-border transaction some first insights into the regulations of the jurisdiction of the target.

I am greatly thankful to all the friends and colleagues who contributed to this scope by submitting articles on their jurisdiction and helped this project come to life. A great thank you also to Oya Deniz Kavame, Sharanya Ranga and Miguel Tornovsky for coordinating the contributions from EMEA, Asia and Oceania and Latin America, respectively.

Last but not least, thank you for the fighting spirit and the opportunity, Marco!

Sven von Mensenkampff, Pavia e Ansaldo, Milan

Particularly for M&A lawyers, the global world is a reality: an increasingly large part of the M&A transactions are cross-border, or have at least a cross-border component.

Trade barriers and protectionist tendencies had begun to spread already in the last couple of years, and particularly in 2019. With the Covid-19 pandemic rolling all over the world and the disruption caused to companies, national economies, markets and supply lines by shutdowns, the calls for foreign investments control, and even for an actual shift from global economy to national autarchy, have grown stronger.

M&A lawyers need to be aware of and pay attention to regulatory barriers, not only in their own country. Oftentimes, it is however very difficult to distinguish mere rumours from actual developments in other jurisdictions - and to understand their practical scope.

With this document, Sven von Mensenkampff has created a very practical, easy to consult and, thus, eminently useful guide.

Thank you very much, Sven!

Marco Rizzi,
Bratschi, Zurich
Chair, IBA Closely Held and Growing Business
Enterprises Committee

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Preliminary Remarks:

This document gives an overview over the approach of the below jurisdictions towards foreign investments before and after the COVID-19-Pandemic. In this context we analyzed the general attitude towards foreign investments, the development of existing restrictive rules, and the influence of the Covid-19 crisis on this development, as well as giving an outlook to the future. This document is structured in order to make the situations in the various jurisdictions comparable.

The information provided in this document does not, and is not intended to, constitute legal advice; instead, all content of this document is for general informational purposes only. This document is updated as at 27 May 2020, however, the content may not constitute the most up-to-date legal or other information.

EMEA

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|-----------------------|-----------|-------------|------------|-------------------|
| • European Union (EU) | • Denmark | • Ireland | • Poland | • Switzerland |
| • Austria | • Estonia | • Israel | • Russia | • The Netherlands |
| • Belarus | • France | • Italy | • Slovakia | • Turkey |
| • Bulgaria | • Germany | • Luxemburg | • Spain | • United Kingdom |
| • Cyprus | • Greece | • Norway | • Sweden | |

AMERICAS

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|-------------|----------|--------|-----------------|-----------|
| • Argentina | • Canada | • Peru | • United States | • Uruguay |
| • Brazil | • Mexico | | | |

ASIA

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|-----------------|-------------|------------|------------|-------------|
| • Bangladesh | • India | • Japan | • Nepal | • Sri Lanka |
| • China | • Indonesia | • Malaysia | • Pakistan | • Thailand |
| • Hong Kong SAR | | | | |

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EMEA Contributions by

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1. EU	
1.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>The EU approach towards foreign direct investments ("FDI") is based on a positive view on the free movement of capital within the EU Community (comp. art. 63 Treaty on the Functioning of the European Union, "TFEU"), which applies between Member States and between a Member States and third countries. Freedom to enter into agreements on FDI is an element of this free movement of capital.</p> <p>The UE's liberal attitude towards FDI led the EU Commission and the EU Court of Justice to criticising national legislation on FDI of Member States, which was centred on protecting formerly state owned companies through a state owned share vested with specific powers, the so-called Golden Share power. The Golden Share power consisted in the exercise of a veto or approval power by national governments, in order to protect public interest in sectors considered strategic such as public services, national defence, transport, telecommunications and energy.</p> <p>As reaction to this protectionist attitude towards foreign investment of Member States, the European Institutions analysed the Golden Share power by raising questions about the compatibility of the various measures taken by Member States with the rights of free movement of capital and freedom of establishment provided for in the European Treaties. Based on those two fundamental freedoms, EU case-law limited the exercise of state intervention on ownership and management of companies, justifying Golden Share powers only if those were non-discriminatory, appropriate and proportionate to overriding reasons of general interest.</p>
1.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>Besides the regulation of the free movement of capital and freedom of establishment in the EU treaties, the EU originally did not have specific legislation on FDI. Nevertheless, the issue of control of foreign investment in companies considered of strategic importance by Member States became so important that, eventually, it took on an EU dimension.</p> <p>In 2017, the European Commission published a reflection paper on globalization that also touches on FDI as key principle for the EU and a major source of growth. However, general concern was raised about foreign investors taking over European state-owned companies with key technologies for strategic reasons, considering that EU investors often did not enjoy the same rights to invest in the country from which the investment originated. In the same year, the European Commission launched a proposal for a Regulation by the European Parliament and of the Council, establishing a framework for screening of foreign direct investments in the European Union.</p> <p>In the Explanatory Memorandum submitted to the EU Parliament for the approval of the EU regulation on FDI, the EU Commission affirmed the need to provide a policy response to protect legitimate interests with regard to foreign direct investments that raise concerns for security or public order of the EU or its Member States. The change of attitude was due to a series of take-overs of European companies involving foreign investors with strong ties to their home governments whose strategy was focused on purchasing European companies operating in the technology or infrastructures sector that were essential to perform critical functions of national economy.</p>
1.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>FDI Screening Regulation</p> <p>In March 2019, the EU adopted a Regulation on the screening of FDI ("FDI Screening Regulation") which will apply from 11 October 2020. After that date, by 12 October 2023 and every five years thereafter, the European Commission should evaluate the operation and effectiveness of the FDI Screening Regulation and submit a report to the European Parliament and the Council in order to amend its effectiveness and scope, if necessary.</p> <p>The FDI Screening Regulation does not establish an EU-wide foreign investment screening mechanism but only establishes a framework (i) for the screening of FDI in the EU and (ii) for a mechanism of cooperation between Member States, and between Member States and the Commission, with regard to FDI on the grounds of (broadly defined) public order or security.</p> <p>Objective of the FDI Screening Regulation is to create a common monitoring system on FDI in the Member States of the European Union in order to protect activities considered of strategic importance and monitor transactions with potential impact on security and public order.</p> <p>For the purpose of the application of the FDI Screening Regulation, a FDI is an investment of any kind by a no EU investor aimed at establishing or maintaining lasting and direct connection between the former and the target with the purpose of carrying on an economic activity in a Member State.</p> <p>Main points of the EU framework on FDI.</p> <p>a. National screening mechanism and duty of notification</p>

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	<p>The FDI Screening Regulation does not create a mandatory screening mechanism at the EU-level, nor does it impose an obligation upon Member States to adopt such a mechanism. Therefore, FDI screening remains within the competence of the Member States. Any existing or newly adopted screening mechanisms or any amendments to those must be notified to the Commission by 10 May 2019 or within 30 days from the entry into force of the newly adopted (or amended) screening mechanism. The Commission must then make a list of Member States' screening mechanisms publicly available.</p> <p>b. Individuation of the FDI object of the screening mechanism</p> <p>The FDI Screening Regulation lets the Member States identify the essential and strategic interests to be included in the list of items of "national security" and on which public intervention is justified, taking as reference the potential effects on:</p> <ul style="list-style-type: none"> (i) Critical infrastructure (such as water, health, media, data processing or storage, electoral or financial infrastructure, and sensitive facilities); (ii) Critical technologies and dual use items (including AI, robotics, semiconductors, cybersecurity, energy storage, quantum computing and nuclear technologies as well as nano-technologies and biotechnologies); (iii) Supply of critical input, including raw materials, as well as food security; (iv) Access to sensitive information, including personal data, or the ability to control such information; and (v) Freedom and pluralism in the media. <p>c. Annual reporting</p> <p>Each year, Member States must submit to the Commission an annual report on FDI that took place in their territory in the previous year, providing also a detailed information on the application of their screening mechanisms.</p> <p>d. Cooperation mechanism and non-binding opinion and observations</p> <p>A cooperation mechanism is established (i) among Member States and (ii) between Member States and the Commission, aiming at the exchange of information about FDI in a Member State that may affect security of public order also in other Member States. The cooperation mechanism applies both to FDI already undergoing screening in a Member State and to FDI in a Member State not yet subject to screening with some differences.</p> <p>(i) Cooperation mechanism for undergoing screening of FDI</p> <p>Member States must notify, as soon as possible, the Commission and the other Member States of any foreign direct investment in their territory that is undergoing screening by providing the information specified in the FDI Screening regulation. The notifying Member States may request comments or an opinion from Commission and the other Member States, respectively. If any other Member State or the Commission considers that the FDI at issue is likely to affect security and public order in another Member State, it may request more information and notify the Member State about their intention to provide comments or an opinion within 15 calendar days from the receipt of the notification. Comments or opinions must be sent to the notifying Member States and in any case no later than 35 calendar days following receipt of the additional information.</p> <p>(ii) Cooperation mechanism for not undergoing screening of FDI</p> <p>A Member State or the Commission may provide comments or an opinion, respectively, if it considers that a planned or completed FDI in another Member State is likely to affect its own security or the public order or of another Member State. Before issuing their comments, the other Member States and the Commission can request information about the FDI at issue.</p>
1.4	Outlook on the Future - short/medium term
1.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>On 25 March 2020, the European Commission issued new guidance on foreign investment screening ("FDI Guidelines") in response to the current health and economic crisis. Whilst European countries were the first to announce more restrictive foreign investment screening in response to COVID-19, the European Commission published those guidelines to EU Member States calling on them to adopt or strenuously enforce their foreign investment screening mechanisms to protect sensitive assets from foreign takeover during the crisis.</p> <p>The general aim of the FDI Guidelines is to preserve EU companies and critical assets, especially in areas such as health, medical research, biotechnology and infrastructures, that are essential for security and public order, from becoming controlled by foreign investors during the market disruption caused by the COVID-19 pandemic, without undermining the EU's general openness to foreign investment. Although the guidance focuses on the healthcare sector, with references to medical and protective equipment, the FDI Screening Regulation and this latest</p>

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	guidance applies to all sectors and are not restricted to the healthcare sector.
1.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>The FDI Guidelines do not introduce any new laws or powers in relation to foreign investment screening, at either EU or Member State level.</p> <ul style="list-style-type: none"> Regarding Member States that already have an existing screening mechanism in place are called on to make full use of the tools available to them under EU and national law to prevent capital flows from non-EU countries that could undermine Europe's security or public order; For those Member States that currently do not have a screening mechanism, the European Commission encourage them to set up a fully-fledged screening mechanism and in the meantime to consider all options, in compliance with EU law and international obligations, to address potential cases where the acquisition or control by a foreign investor of a particular business, infrastructure or technology would create a risk to security or public order in the EU.
1.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>In recent years, the position adopted by the European institutions with regard to foreign investment in Europe has undergone a major change. From an initial openness towards FDI justified by the freedom pillars of the European Union, it has come to a partial closure due to the growing risk of foreign takeover of critical assets.</p> <p>The FDI Screening Regulation reflects a new attitude of the EU towards FDI, triggered by geopolitical and economic developments, by trying to reach a delicate balance between its openness to foreign investment, considered as essential for EU economic growth, competitiveness, employment and innovation and an increased potential risk to strategic industries.</p> <p>However, the mechanism of cooperation set forth in the FDI Screening Regulation face some legal and practical challenges. Firstly, in relation to the practical definition of abstract concepts, including public order and national security, and secondly, with regard to the collaboration and coordination effort required at a national level, not providing for a EU screening mechanism towards FDI directly applicable by all Member States. Moreover, in relation to its effectiveness, the European Commission can only express its power through non-binding opinions, not having the power to ultimately block any cross-border transaction.</p> <p>The latest guidance does not introduce any new laws or powers in relation to foreign investment screening, either at EU or Member State level. Nevertheless, This latest initiative by the European Commission encourages Member States to use whatever powers they have to protect strategic assets and technologies from foreign takeover at this critical time.</p> <p>This latest message by the European Commission, along with measures already announced by some Member States (see below), are likely to be the start of a more restrictive approach to foreign investment review in Europe in the coming months and in the next future. The reason for that is not only the quick response to the pandemic crisis but also the Member States' concern about the loss of strategic technological knowledge not just in the security sector but also from a more economic perspective which will most likely ultimately lead to a new era of European protectionism.</p>

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2. Austria	
2.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	Until the COVID 19 crisis, the question of foreign direct investment was a topic of rather minor importance in Austria. Section 25a of the Austrian Foreign Trade Act (" AußWG ") was enacted in 2013 in order to control acquisition transactions by third country nationals in Austrian companies that could pose a threat to public security and order within the meaning of Art 52 and 65 (1) TFEU. In the meantime, an Investment Protection Act is also to be enacted in Austria - following the German model - which will lower the threshold for the obligation to obtain a permit to 10%. In future, approval of a foreign direct investment is to be required if the acquisition could impair security or public order. It is therefore no longer to be based on the fields of activity of the companies to be acquired, but on effects on certain public interests, such as the protection of critical infrastructures and technology as well as of sensitive data, and the preservation of media plurality.
2.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	As mentioned in point 2.1 above, during the COVID 19 crisis the Austrian Federal Government announced a tightening of Austrian foreign trade law in order to prevent the "sell-out" of Austrian companies to third country nationals or companies from third countries. The announced draft law is not yet available. However, there were already endeavours by the previous government to intensify the control of foreign direct investments. There is much to suggest that the current government's draft will be at least as "strict" as the old draft law.
2.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	As set out in point 2.1. above Section 25a AußWG entered into force in 2013.
2.4	Outlook on the Future - short/medium term
2.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	Yes. Please see point 2.2 above. The change is in line with international trends (EU Commission Guidance, recent changes in Germany), which were further strengthened by the COVID-19-crisis.
2.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	A publicly accessible draft is not yet available. However, we assume that in future the approval threshold will be lowered to 10% for companies that are particularly relevant to defence and for companies that operate particularly security-relevant civil infrastructures. In addition, it is very much likely that the scope of Austrian foreign investment control will be widened by also including companies from the IT/software sector, and even media undertakings if they contribute to the formation of public opinion and are characterised by their broad impact. Finally, intervention will likely be made easier by lowering the test for intervention: it will likely be sufficient for intervention that the transaction has the potential of impairing public safety or public order. As already mentioned, it is moreover likely that in future the focus will no longer be on the fields of activity of the companies to be acquired, but on effects on certain aspects.
2.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	We believe that the tightening of Austrian foreign trade law regarding foreign direct investment will not be reversed even after the end of the COVID 19 crisis.

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3. Belarus	
3.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>The Republic of Belarus (also the “State” or “Belarus”) followed a predominantly protectionist approach towards foreign investment. For a long period of time, in Belarus the institution of so-called “Golden Share” was effective. This institution was introduced for the purposes of ensuring security and safety of the State, observation of economic interest of the State, protection of morality, health and constitutional rights of Belarusian citizens by the relevant Edict of the President of the Republic of Belarus “On the special right” (“Golden Share”) of the state to participate in the management of business companies” and provided for a special right of the State to participate in the management of business companies created in the result of privatization of state or municipal enterprises or reorganization of such companies. This institution was applicable to the mentioned companies even in cases when there was no State share in them. The introduction of the “Golden Share” in a business company required such company to accept the decisions of the appointed representative of the State exercising ownership supervision related to the business company’s activities in an undisputed manner, without the right to reject or cancel them, regardless of compliance with the terms and procedure for making such decisions.</p> <p>Over time, in order to attract investors the Golden Share institution was completely cancelled in 2008 as it increased the risks for investors in the State, while the State had a need for foreign investment – the main funds were worn out and, accordingly, a large modernization was needed.</p> <p>Currently attracting foreign investment is an important priority for the Government of Belarus and the Belarusian legislation is quite liberal and welcoming in this area. The principal document regulating investment in Belarus is the Law No. 53-Z dated 12 July 2013 “On Investments” (the “Law on Investments”) which provides explicit and transparent definitions for “investment” and “investor” and related rules governing the methods of investment and fundamental guarantees of protection for investors (for more details see para 3.2. below).</p>
3.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>Although the Republic of Belarus followed a predominantly protectionist approach towards foreign investment, in the recent years attracting foreign investment has become an important priority for the Government of Belarus and the Belarusian legislation has been changed respectively in order to create more favourable conditions for foreign investors.</p> <p>In 2013 the Law on Investments was adopted that mainly improved investment climate of Belarus and increased the investment attractiveness of Belarus. Generally, foreign and national investors have equal rights in the Republic of Belarus. In line with Belarusian investors, foreign investors enjoy the advantages of the preferential investment regimes and guarantees of their rights and investment protection.</p> <p>The Belarusian legislation provides for a number of possibilities of preferential investments treatment in Belarus. In particular, the Presidential Edict No. 10 dated 6 August 2009 “On the creation of additional conditions for making investments in the Republic of Belarus” (as amended) enables investors to receive additional guarantees of protection for their capital inflows, as well as benefits and preferences for implementation of investment projects by means of entering into an investment agreement with the Republic of Belarus. The Republic of Belarus is attracting investments through establishment of an attractive tax and customs regime in certain areas, including six free economic zones where a special tax and customs regime applies to residents of such zones. In addition, the Government of Belarus has sought to encourage investments in rural areas of Belarus by establishing special beneficial tax regulations for such areas. The Republic of Belarus also attracts foreign investments in respect of such investment projects as the High Technology Park, the China-Belarus Industrial Park “Great Stone”, the Avgustov Canal tourist and recreation park, Special Economic Zone “Bremino-Orsha”. Preferential investment treatment in the abovementioned cases mainly involves exemption from certain tax payments, as well as exemption from import customs duty under certain conditions. These special tax and customs regimes make it easier for local businesses to achieve higher profitability that in turn makes such businesses more attractive for foreign investors. The Belarusian Government also attracts investors through lifting restrictions on profit repatriation. In 2018 the Decree of the President of the Republic of Belarus “On Digital Economy Development” No. 8 that <i>inter alia</i> legalised initial coin offerings, cryptocurrencies and smart contracts in the Republic of Belarus entered into force that made the Republic of Belarus the first jurisdiction globally with comprehensive legal regulation of businesses based on blockchain technology.</p> <p>Due to the work on improvements of the business environment conducted in recent years, the investment climate of Belarus was improved significantly and according to the Doing Business 2020 report the Republic of Belarus ranked 49 among 190 countries on the World Bank’s ease of doing business ranking 2020.</p>
3.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>In the modern Belarusian economy there is increase in state influence on the investment process which is determined by the macroeconomic aspect of the investment itself because it plays a significant role in ensuring economic stability.</p> <p>General Restrictions</p>

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	<p>Under a general rule, foreign and national investors have equal rights in the Republic of Belarus. The general restrictions on investments for both foreign and national investors include:</p> <ul style="list-style-type: none"> • prohibition to invest in companies possessing the dominant position at the goods markets of Belarus without the approval of the Belarusian antitrust authorities; • prohibition to invest in areas prohibited by the Belarusian legislation; • restrictions established on the basis of the legislative acts of Belarus in the interests of national security (including environment protection, historical and cultural valuables), social order, protection of morality, population health, rights and freedoms of other persons. <p>Besides the above, foreign investors are additionally restricted when acting in such areas as mass media, banking and insurance (e.g. availability of quotes in attraction of foreign capital in banking and insurance sectors, etc). In particular, the Belarusian banking legislation provides for a limited volume of the foreign capital in the banking system of Belarus (so-called "quote") in the amount of 50 %. Such quote is calculated as the ratio of total capital of non-residents in the charter capitals of banks whose shareholders are foreign investors to the aggregate charter capital of banks registered in Belarus. In case the mentioned quote is achieved, the National Bank of Belarus refuses to register banks whose shareholders are foreign investors or may prohibit the increase of the charter capital of a bank whose shareholders are foreign investors by means of contributions of non-residents and (or) the alienation of shares to non-residents should this cause the excess of the determined 50 % quote. Similarly, the quote of foreign investors in charter capitals of all insurance companies of Belarus is established in the amount of 30 % and, once such a quote is achieved, the Ministry of Finance of Belarus terminates registration of insurance companies with participation of foreign investors and (or) issuance of insurance licenses to such companies. In mass media sphere it is prohibited to assign the functions of the mass media editorial office to a commercial company which 20% or more shares (stocks in the charter capital) are directly or indirectly individually or collectively owned by a foreign state, foreign and (or) international legal entity (organization that is not a legal entity), foreign individual, stateless person, legal entity the share of foreign participation in the charter capital of which is 20 % or more.</p> <p>Nationalization and Requisition</p> <p>In accordance with Article 12 of the Law on Investments in exclusive cases property being an investment or created as a result of investments may be subject to nationalization or requisition on a refundable basis.</p> <p>Nationalization is possible only for reasons of public necessity and upon the condition of timely and full compensation of the value of the nationalized property and other losses caused by nationalization.</p> <p>Requisition is possible in cases of natural disasters, accidents, pandemics and other circumstances of an extraordinary nature and only in the interests of the society upon the decision of state bodies with compensation to the investor of the value of such requisitioned property. An investor whose property has been requisitioned has the right, upon termination of the circumstances in connection with which the property had been requisitioned, to demand within the court procedure to return the remaining property.</p> <p>Conclusion of an investment agreement</p> <p>As mentioned in para. 3.2 above, for performance of foreign investments in Belarus and receipt of additional benefits a foreign investor may conclude an investment agreement with the Republic of Belarus. In order to conclude an investment agreement, the investor submits an application for its conclusion to the relevant state body. If within 30 calendar days from the date of registration of the application providing for receipt of a land plot included into the list of land plots for implementation of investment projects such state body has not received another application for conclusion of an investment agreement providing for receipt of the same land plot, then such agreement is concluded without tender for selection of the investor. Otherwise, a tender is to be held to select the investor.</p> <p>Consideration of the application for conclusion of an investment agreement and notification of the investor are to be made within 30 calendar days from the date of registration of the application for conclusion of the investment agreement (if the investor does not apply for the provision of land plot for the construction of objects provided for in the investment project) and within 60 calendar days (if the investor applies for the provision of such land plot). Therewith, the conclusion of the investment agreement is possible not earlier than 30 calendar days from the date of registration of the application.</p> <p>If there is a need for additional elaboration of the terms of the investment agreement and (or) the terms of implementation of the investment project, the term of consideration of the application may be extended once but for not more than 30 calendar days.</p>
3.4	Outlook on the Future - short/medium term
3.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	During the pandemic, a number of measures was taken at the legislative level to protect the weakened economy and businesses affected by severe economic consequences. However, these measures do not affect foreign investments but are mainly directed at support of domestic enterprises in strategic and non-strategic areas.

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3.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	Currently there is no any law making initiatives in relation to state intervention in case of foreign investments.
3.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>Currently, the policy that will be implemented in relation to foreign investments is not defined. Due to the current situation, many companies are forced to deal with economic damage. In this regard, investors will be cautious before making deals, but, on the other hand, they can afford to invest in companies that have been weakened by the crisis.</p> <p>The investment policy of the Republic of Belarus requires constant adjustment to take into account changing internal and external conditions, since this determines the effectiveness of the rules of conduct established by the State in the economic field for participants in the investment process.</p> <p>The formation of partnership relations between the State and business should also play a major role in the development of the Belarusian investment strategy. These relations shall not include direct state intervention in the affairs of entrepreneurs, but assistance, coordination and the formation of economic and legal conditions for the development of entrepreneurship. By participating in the investment process, the State shall aim to create conditions that would focus on choosing the most effective ways to use existing investment resources.</p> <p>We assume that state regulation of the investment process should not cancel the mechanisms of market management and should not replace them with directive management but shall contribute to the formation of favorable market conditions for the activities of participants in the investment process.</p>

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4. Bulgaria	
4.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Following its accession in EU in 2007, Bulgaria is seen by investors as having a favourable foreign investment regime that includes government incentives for new investment and low corporate and personal income taxes (10 %). Practically, all governments so far have proclaimed the attraction of foreign investment as one of the key policy goals in their programmes, thus making Bulgaria welcoming towards foreign investment.</p> <p>Foreign investors are entitled to perform economic activity in the country under the same conditions applicable to Bulgarian investors. When international treaties to which Bulgaria is a party stipulate more favourable terms and conditions for foreign investment, these terms have precedence over the local rules.</p> <p>Foreign investments in Bulgaria may not be expropriated except for exclusively important state needs that cannot otherwise be met, and subject to prior and adequate compensation. In addition, there are various investment incentives measure which apply depending on the type of investment and the project.</p>
4.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>Historically, Bulgaria was part of the Soviet block until 1989. Respectively, the economy was state-centric and foreign investments were practically not existing. The transition to pluralistic democracy started since 1991. Foreign direct investment has been regarded as an important driver of economic development in Bulgaria since the very start of the market transition, which determined the establishment of a liberal foreign investment regime.</p>
4.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Generally, there are no limitations on foreign ownership or control of firms, and foreign entities are formally granted the same treatment as national companies. However, according to the Offshore Company Act, companies registered in certain “tax haven jurisdictions” (i.e. “offshore companies”) cannot do business in 28 specific sectors (including banking, insurance, pension funds, exploitation of natural resource, telecommunications, energy and others, though there are certain exemptions).</p> <p>Following the recommendations of the European Commission, the Offshore Company Act was amended so that offshore entities are allowed to own up to 10% of Bulgarian companies engaged in those specific business activities. The ownership threshold of 10% is applied cumulatively, i.e., two or more offshore companies are not allowed to own more than 10% of a Bulgarian company falling within the scope of the law.</p> <p>Apart from the above restrictions, there are no limitations for foreign and domestic private entities to establish and own a business in Bulgaria. The Investment Promotion Act stipulates equal treatment of foreign and domestic investors. The law encourages investment in manufacturing and high technology, as well as in education and human resource development. It creates investment incentives by helping investors purchase land, providing state financing for basic infrastructure and training new staff, and facilitating tax incentives and opportunities for public-private partnerships (PPPs) with the central and local government.</p>
4.4	<p>Outlook on the Future - short/medium term</p>
4.4.1	<p>Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).</p> <p>In the face of the COVID-19 pandemic the Bulgarian government took some measures to foster part of the Bulgarian economy. Thus, the big chain of food stores (i.e. chains with more than 10 stores in Bulgaria) are obliged to have special places with sufficient area for exhibition and sale of food products made in Bulgaria. This measure will be in force at least until 31 December 2020.</p> <p>state has increased national protectionism towards foreign investment by extending the screening procedure to sectors, which are deemed to be of national primary importance.</p> <p>In addition, during the state of emergency, the export of medicinal products from the territory of the Republic of Bulgaria was prohibited and this prohibition may be extended by an order of the Ministry of Health.</p> <p>We expect that the Bulgarian government will continue to closely monitor various economic sectors and react in case the state intervention is required to preserve the national interest.</p>
4.4.2	<p>Are there already any law making initiatives in place in this respect? (if yes, please give a short description)</p>

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	At this stage there are no such legislative initiatives.
4.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>The revival of foreign investments depends on the improvement of the economic situation in all EU countries. Among the challenges investors have to face are the global uncertainty around the COVID-19 and the unpredictability around the duration of the epidemic emergency.</p> <p>Bulgarian Government recognizes that improving the business environment in the country would help unlock job creation and economic growth. The public procurement is one of the major financial instruments for allocation of state funds and resources towards private sector and as such can play a vital role for the recovery of the economy. In Bulgaria, public procurement procedures are opened for purchase of goods, delivery of services and construction works, and various procedures are taking place.</p> <p>More generally, it is likely that there will be unified approach to cope with the economic recovery and a common strategy on EU level to foster the investment climate.</p>

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5. Cyprus	
5.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	(i) Liberal and welcoming.
5.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	Cyprus relies strongly on foreign investment and always strives to facilitate foreign investment by updating its rules and procedures.
5.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	Cyprus had limited restrictions in place prior to Covid-19 pandemic in strategic sectors linked with the national and public interest of the country.
5.4	Outlook on the Future - short/medium term
5.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	No increase in state intervention in the case of foreign investment is expected. In fact, the expectation and strategic plan for Cyprus was and will remain the same after the Covid-19 pandemic, to facilitate foreign investment in the country. With a comprehensive legal framework to back it, foreign investment is seen as an advantage to the economy of Cyprus not only in the short term but also in the long run.
5.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	We are not aware of any related law-making initiatives which are in place. The focus of parliament and the ministerial counsel is at this stage towards the careful lifting of the restrictive lockdown measures and the revival of the tourism industry.
5.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	Our expectation is that investors will change their investing strategy by taking into account the status and quality of 'national healthcare' as well as the capability of countries to tackle diseases such as the Covid-19 pandemic before engaging in any type of investment. We are also expecting an increased investment in the 'technology' and 'health' sectors which have already gained further momentum as a result of Covid-19.

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6. Denmark	
6.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Denmark has a predominantly liberal policy on foreign investments. Due to the small national economy, it relies heavily on international trade and investments. Because of this, Denmark has historically been very accessible to foreign investment and the country does not have any general legislation aiming to differentiate between domestic and foreign investors. Of course, a contributing factor can also be that Denmark – as a member of the European Union – must adhere to the provisions of the Treaty on the Functioning of the European Union (TFEU) and the number of freedoms contained in this.</p> <p>Within Danish legislation, there are rules stipulating investment screening mechanisms and ownership restrictions only within certain sectors. Thus, the World Bank ranked Denmark as the easiest place in Europe to do business in 2019, and Denmark ranked fourth in the world among 190 countries. Also, in 2019, Denmark was ranked in the top 10 of Forbes' global table for Best Countries for Business.</p> <p>Denmark's liberal attitude on foreign investments has been <i>primus motor</i> for the conclusion of several international investment agreements. For example, Denmark has signed the Energy Charter Treaty. Further, Denmark has negotiated 59 bilateral investment treaties with other states establishing the terms and conditions for the mutual protection of private investments made in one of the states by nationals or companies of the other state.</p> <p>As a consequence, Denmark has in recent years seen many significant foreign investments from investors from all over the world into a large variety of industries.</p>
6.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>As it will be elaborated below, Denmark has not established general restrictions on foreign investments or a general screening procedure regarding foreign investments. The few screening procedures that Denmark has vary depending on the sector to which the procedure applies. However, in the light of the COVID-19 pandemic, Denmark may increase its protection against foreign investment, e.g. by extending the screening procedure to sectors, which are deemed to be of national primary importance (see the below).</p>
6.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Applicable Danish legislation does not currently include any broader legal basis for the Danish government to intervene in case of foreign investments. Thus, there is no general right or obligation to carry out screenings of foreign investments in Danish companies. However, specific sector legislation does – directly or indirectly – allow for investment control by a combination of approaches: investment screening laws and ownership restrictions. This is namely the case for sectors considered strategic such as military materials, cyber security, reliability of supply, outer-space activities and third country investment in financial enterprises.</p> <p>Currently, the only Danish laws including investment screening mechanisms or ownership restrictions based specifically on criteria of nationality are:</p> <ul style="list-style-type: none"> • <i>Act on the continental shelf and certain pipelines installations on territorial waters</i> (The Danish Consolidated Act No. 1189 of 21 September 2018) stating that the installation of electric cables and pipelines for the transport of hydrocarbons on Danish territorial waters requires permission from the government. Permission will only be given if it is compatible with national foreign, security and defence policies. • <i>Act on War Material</i> (The Danish Consolidated Act No. 1004 of 22 October 2012) stipulating that a specific approval from the Ministry of Justice is required if foreign persons or companies acquire a certain degree of ownership and/or influence over the manufacturing company, e.g. if foreign nationals own more than forty percent of the share capital and/or are able to exercise more than twenty percent of the votes in the manufacturing company.
6.4	<p>Outlook on the Future - short/medium term</p>
6.4.1	<p>Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).</p> <p>Since the COVID-19 pandemic, the Danish government has not adopted any measures with the direct aim of restricting foreign investments in Danish companies. However, the Danish government is concerned about protecting critical infrastructure in Denmark, which is also an issue that is increasingly focused on in a broader EU context.</p> <p>On 19 March 2019, the European Council adopted Regulation (EU) 2019/452 ("FDI Screening Regulation"), containing new rules on common screening of foreign direct investments ("FDI") in the European Union. The FDI Screening Regulation establishes a framework for the Member States' screening of FDI into the Union on the grounds of security and public order. The FDI Screening Regulation does not obligate the Member States to implement or enforce national screening mechanisms, nor does it obligate the Member States to carry out specific screenings. Thus, the final decision on whether to screen or to take any other measure concerning an FDI remains with the Member State in which the FDI is planned or has taken place. Given that the regulation does not yet apply, the EU Commission has – as a direct result of the current public health crisis and related economic vulnerability – issued additional guidelines</p>

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	<p>("FDI Guidelines") on the use of the FDI Screening Regulation on 25 March 2020. The guidance springs from the risk in which many European enterprises find themselves because of the COVID-19 outbreak. In the guidelines, the Commission urges member states to use all tools available to them to prevent capital flows from non-EU countries that could undermine Europe's security or public order (see section 1.3 and 1.4.2 above for more details on FDI Screening Regulation and FDI Guidelines).</p> <p>The Danish government has, however, not yet initiated any further steps as a consequence of the COVID-19 crisis, FDI Screening Regulation, or FDI Guidelines.</p>
6.4.2	<p>Are there already any law making initiatives in place in this respect? (if yes, please give a short description)</p>
	<p>There are currently no pending legislative initiatives on foreign investment in Denmark. Further, Denmark does not at present have a cross-sectoral foreign investment screening system. However, on 1 April 2020, the Danish Minister of Justice confirmed that a cross-ministerial working group has been set up, consisting of several ministries, which is currently preparing recommendations for possible models for a future Danish screening mechanism. The government proposes that the screening procedure should include critical infrastructure within the energy sector, the area of IT and telecommunications, the transport sector, the food sector, and the health sector as well as investments in enterprises using advanced technologies or dual-use technologies such as AI, robot technology or nanotechnology. The government also proposes that future legislation should not include only foreign direct investments but also other foreign financial activities, e.g. where foreign control is established through leases or operating contracts granting access to sensitive information or control of vital infrastructure.</p> <p>In light of the onslaught of the COVID-19 pandemic, more attention will presumably be directed to the protection of critical healthcare infrastructure and the supply of critical commodities. Considering this, and especially in light of the FDI Screening Regulation and FDI Guidelines, we would expect to see a bill relatively soon. The Danish government has announced that it expects to introduce this in the 2020/2021 parliamentary year (6 October 2020- 5 October 2021).</p>
6.5	<p>Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.</p>
	<p>The full impact of the COVID-19 outbreak is yet to be seen. It will presumably continue to destabilize markets, leaving many enterprises at risk of predatory buying, where companies can potentially be taken over at an artificially low price. Such a trading environment can often attract investors on the hunt for critical and vital assets (certain technologies, infrastructure, and systemically important companies). From a post-pandemic perspective, the protection of such industries is of vital importance for a well-functioning European market.</p> <p>At the same time, one must have in mind, that Denmark is a small economy and highly dependent on trade with other countries – both inside and outside the EU. It is vital for the Danish economy, that it is seen as an open destination for foreign investments – bringing with them valuable knowledge and necessary capital.</p> <p>Thus, it will, in the long run, be important to strike the right balance between Denmark continuing to work to open markets, simplifying regulation, and ensuring effective mechanisms for enforcing fair business conditions, however without being naïve and working to protect vital Danish infrastructure from foreign predatory buying.</p> <p>Outside the COVID-19 context, a main priority for Denmark in the coming years will be the sustainable development in the Arctic. Greenland is a part of the Kingdom of Denmark making the Kingdom of Denmark an Arctic state. Greenland has been granted home rule and self-governance and Greenland is not a member of the EU. With the melting of the Arctic icecap, inaccessible areas containing significant natural resources, e.g. iron, gold uranium, etc., are now gradually becoming navigable. Thus, foreign investments in the Kingdom of Denmark is expected to increase in the future, especially in Greenland and Arctic infrastructure.</p>

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7. Estonia	
7.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>Since the restoration of independence in 1991, Estonia has been open to the internationalization of companies. The large role of foreign companies in the economy dates to the successful privatization in the early 1990s. As with other small-scale open economies, Estonia requires a constant flow of foreign investment in order to maintain its economic expansion. According to the OECD, the volume of foreign direct investment in Estonia at the end of 2018 was 82% of Estonia's GDP, which puts Estonia clearly ahead of other countries and more than doubles the OECD average. Thus, in terms of investment, trade, government intervention and property rights, Estonia has policies that are amongst the most liberal in Europe. Most of the direct investments have been made from Sweden, Finland, the Netherlands, Russia and Norway, which are Estonia's main trade partners. Foreign investors have equal rights and obligations with local entrepreneurs. All foreign investors may establish a company and conduct business in Estonia in the same way as local investors; no restrictions apply.</p>
7.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>The position has remained more or less constant. If anything, there have been attempts to make the legal environment more favourable for foreign investors. For instance, the amendment of the Commercial Code (RT I 1995, 26, 355) which will enter into force on 01.08.2020 and which concerns the transfer of shares of a private limited company. According to Estonian law the transaction constituting an obligation to transfer a share and disposition are separate. Previously the transaction constituting an obligation to transfer a share and a disposition had to be notarised. This required for all participants to be present in Estonia which in case of foreign shareholders can be difficult. The amendment will make it possible in certain conditions to waive the formal requirement so that the transfer agreement would have to be at least in a format that can be reproduced in writing. Meaning that the contract of the sale of a share can be signed digitally if certain conditions stipulated in the Commercial Code are met, such as for example the share capital of the company wanting to waive the format requirement being EUR 10 000 and paid in full.</p>
7.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>The acquisition of certain immovables is restricted by the Restrictions on Acquisition of Immovables Act (RT I, 23.02.2012, 11) ("KAOKS"). Namely KAOKS provides the restrictions on the acquisition of immovables used as profit yielding land (agricultural and forest land) arising from public interest and the restrictions on the acquisition of immovables arising from national security reasons.</p> <p>Acquiring 10 hectares or more of profit yielding land by a natural or legal person of a third country is only allowed with the authorisation of the council of the local government of the location of the immovable to be acquired. Acquisition of immovables in the areas described in KAOKS, mainly concerning the borders of the country, by a natural or legal person of a third country is prohibited on the grounds of national defence. No such restrictions apply to Estonian natural or legal persons or natural or legal persons of another country, which is a contracting party to the EEA Agreement or a member state of the Organisation for Economic Cooperation and Development</p>
7.4	Outlook on the Future - short/medium term
7.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>A package of economic mitigation measures has been adopted to combat the effects of the Covid-19 outbreak and support the economy by the government. So far there have been no measures regarding state intervention in case of foreign investment. Considering the fact that the Estonian economy relies heavily on FDI it is unlikely that this position would change in a drastic way in the future.</p>
7.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>On a national level there have not been significant initiatives. On a European level the Foreign Direct Investment Screening Regulation (Regulation (EU) 2019/452) will enter into force as of 11 October 2020. The regulation addresses the setting up of the new EU-wide mechanism for cooperation, enabling Member States and the Commission to exchange information and raise concerns related to specific foreign investments if they pose a threat to the security or public order of more than one Member State, or when an investment could undermine a project or programme of interest to the whole EU, such as Horizon 2020 or Galileo. Furthermore, on 25 March 2020 the European Commission issued Guidelines on FDI in response to the Covid-19 emergency to ensure a strong EU-wide approach to foreign investment screening in a time of public health crisis and related economic vulnerability. The aim is to preserve EU companies and critical assets, notably in areas such as health, medical research, biotechnology and infrastructures that are essential for our security and public order, without undermining the EU's</p>

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	general openness to foreign investment.
7.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>Already the beginning of the negative economic impact of the Covid-19 pandemic can be seen and will most likely continue to be seen in the future. On 8 March 2020, the United Nations Conference on Trade and Development released a special issue publication regarding the monitoring of investment trends all around the world and how they might be affected by the COVID-19. The report outlined that outbreak and spread of Coronavirus (Covid-19) will negatively affect global FDI flows and that the downward pressure on FDI will be -5% to -15% (compared to previous forecasts projecting marginal growth in the FDI trend for 2020-2021). In Estonia for instance, the impact of FDI by neighbouring countries is waning, especially considering that a large part of that is tourism. In light of the Covid-19 pandemic and the subsequent negative impact on the economy, as well as the measures taken by the European Commission regarding the protection of EU's critical assets and technologies from potential hostile takeovers and investments by non-EU companies, a more protectionist direction, at least in Europe, can be predicted. Due to this some European countries are adopting stricter rules regarding FDI and most likely others will follow.</p>

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8. France	
8.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	Historically, France can be considered as liberal and welcoming towards foreign investments. The Monetary and Financial Code states in this respect that, as a matter of principle, "financial relations between France and abroad are free". However, since several decades, the French legislation (as in most countries) regulates foreign investments in sensitive sectors which are considered as being strategic and in respect of which a control is needed to protect the interests of the French nation. This control takes the form of an authorization from the French Ministry of Economy that must be obtained by the foreign investor before completing its (direct or indirect) investment in a French target operating in a sensitive sector (these sectors are listed).
8.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>Even if the principle of freedom referred to above has not changed, the trend since several years, like in many other countries, is to strengthen the French foreign investment authorization regime described above. For that purpose, several changes to the regulatory environment were implemented, in particular in 2014 (the "Montebourg decree"), 2018 and 2019 (the PACTE law of May 2019 and a decree of December 2019). The recent changes result in particular in :</p> <ul style="list-style-type: none"> • a significant extension of the list of sectors which are considered "sensitive", resulting in a significant increase of the number of foreign investments falling in the scope of the prior authorization regime (e.g. - in addition to historic sectors such as defense - energy, supply of water, space, transport, electronic communications, protection of public health, cybersecurity, AI, print media and press sector, food safety, research and development activities relating to critical technologies and dual-use goods); • a strengthen of the sanctions in the event of a breach of the regulations; and • an extension of the definition of the "foreign investment" falling in the scope of the prior authorization regime: with respect to non EU-investors, this regime now applies when the investor crosses the threshold of 25% of ownership of voting rights of the French target (previously 33.33%), either directly or indirectly, alone or in concerted action.
8.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>An investment (as defined below) by a foreign investor in the listed "sensitive sectors" requires a prior authorization from the Minister of Economy.</p> <p><u>Definition of investment</u></p> <ul style="list-style-type: none"> • the acquisition, either directly or indirectly, of the control of a French entity; or • the acquisition of all or part of a branch of activity of a French entity; or • <u>with respect to non-EU investors only</u>: the crossing of the threshold of 25% of the voting rights of a French entity, either directly or indirectly, alone or in concerted action. <p>The notion of control is defined by reference to the French Commercial Code,</p> <p><u>Definition of foreign investor</u></p> <ul style="list-style-type: none"> • a natural person of foreign nationality; or • a natural person of French nationality who is not a French resident (by reference to the French Tax Code); or • a foreign entity ; or • a French entity which is controlled by one or several persons or entities who/which belong to one of the abovementioned categories. <p>In the event of a chain of control (i.e. a legal entity and the entities/persons controlling it), any member of this chain is an investor.</p> <p>A EU investor is either (i) an individual having the nationality of a EU/EEA member and residing in one of these countries or (ii) a legal entity in respect of which all the members of the chain of control are governed by the laws of a EU/EEA member or have the nationality and reside in one of these countries. Other foreign investors are non-EU investors.</p> <p><u>Procedure</u></p> <p><u>Prior request</u></p> <p>French law organises a possibility for the French target or the potential investor to question the French ministry as to whether the activity falls in the scope of the listed sensitive sectors. The Minister of the Economy must reply within two months.</p> <p><u>Filing of an authorization request</u></p> <p>The Minister of Economy gives an initial response within 30 business days from the filing of the authorization request, which may either authorize the investment unconditionally or inform the investor of further examination. If applicable, 45 days later, a second response is given to the investor, which is either a refusal, or a mere authorization or an authorization subject to conditions. Failing any answer in the abovementioned time limits, the authorization is deemed rejected.</p> <p>The Minister of Economy must give reasons for the refusal to grant an authorization. The refusal can be justified by the fact if the implementation of conditions is not sufficient to ensure the preservation of national interests. The Minister of Economy may take into consideration the fact that the investor has links with a foreign government or public body. If the investment author-</p>

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	<p>ization is subject to conditions, they may be revised at the request of the investor or on the initiative of the Minister of Economy, in particular in the event of a change in the shareholding of the target entity or if the conditional authorization provides for their revision.</p> <p><u>Sanctions</u></p> <p>The Minister of Economy may impose a certain number of sanctions against an investor who does not comply with the conditions (withdrawal of authorisation, injunction to comply with the conditions of the authorization, etc.).</p> <p>Many sanctions are provided if an investment is made without having obtained the required authorization or the conditions that were imposed to obtain the authorization are not (or no longer) satisfied such as injunction, suspension of voting rights/ financial rights, a fine (up to the higher of the following amounts: twice the amount of the investment, 10% of the annual turnover of the target, 5 millions euros for legal entities or 1 million for natural persons).</p> <p>In addition, if the investor does not obtain the prior approval whereas the investment falls in the scope of this regime, the investment is void.</p>
8.4	Outlook on the Future - short/medium term
8.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>As a result of the economic consequences of the Covid-19 crisis that makes certain French targets more vulnerable to foreign investments, France has lowered the current 25% threshold <u>applicable to non-EU investors</u> (see 8.3 above) to 10%. We are waiting for the publication of the decree that will implement that change to understand what its precise scope is. This change could indeed be limited to French listed targets and could be temporary at a first stage (i.e. until end of December).</p> <p>In this new scenario (between 10 and 25% ownership), the control should be subject to a specific procedure: the investor crossing the 10% threshold would have to notify the Treasury Office, and the Minister of Economy would then have 10 days to decide whether the transaction should be subject to a more detailed examination, based on a complete request for authorization. Such an examination may result in the foreign investor not being allowed to hold more than 10% of the voting rights of the French company.</p> <p>This measure seems to respond to the concerns raised by French government, certain sectors and the European Commission, alerting Member States to the increased risk of attempts by third-country investors to acquire strategic industries in the European Union, such as healthcare or related activities.</p>
8.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>France has already changed its regulations by an order of end of April 2020 to expressly include biotechnologies in the list of critical technologies sectors. As explained above (see 8.2), research and development activities relating to critical technologies are indeed included in the list of sectors falling in the scope of the prior authorization regime.</p>
8.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>Due to the great degree of uncertainty in the transactional space, the direction of the French regulations on foreign investments is difficult to anticipate.</p> <p>On the one hand, we observe the trend described below - since several years now - to increase the control on foreign investments in sensitive sectors, whose list is increasing. In addition, the crisis results in a higher risk of opportunistic acquisitions of French targets which are weakened by the crisis under conditions that could be detrimental to them and to French interests.</p> <p>On the other hand, the regulatory environment should not discourage investors from doing acquisitions in France in particular if it could help to restore the business situations of certain French targets and given the current context where potential investors will take a cautious approach before committing to significant transactions.</p> <p>We believe that the French position would evolve in the future depending on the positions taken by other countries in this respect and pressures which could come from specific sensitive sectors claiming for more protection (e.g. space and defense). We however note that France has historically been more welcoming than other countries in this respect and, for the moment, the hardening of the regulations described above is presented as temporary.</p>

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9. Germany	
9.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	The German approach to foreign investment control has been rather liberal to date. Germany has always been among the states attempting to defend and even to extend the free trade of goods and capital, including, in particular, allowing investments from non-EU companies and investors into German target companies.
9.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>The increasing number of investments from non-EU states, in particular recent acquisitions in sensitive and high-technology industries by Chinese investors, however, have led to a change and caused various substantial amendments of the applicable German foreign investment control laws during the last 3 years.</p> <p>Under the current law, the Federal Ministry for Economic Affairs and Energy (<i>BMWi</i>) must be notified of any planned non-EU investment in critical infrastructure and any non-German investment in security-related technologies whereby the investor directly or indirectly acquires 10 per cent or more of the company's voting rights. At the end of last year, the German Federal Minister for Economic Affairs Peter Altmaier presented the final version of his "Industrial Strategy 2030". In the strategy, the Ministry announced a further tightening of German foreign investment control laws in order to protect German manufacturers of "critical technologies" from an unscreened acquisition by non-EU investors. Prospectively, this list of so-called "particularly security-relevant" companies that fall within the scope of German foreign investment control may be extended to include manufacturers of "critical technologies" – for example in the fields of artificial intelligence, robotics, semiconductors, biotechnology and quantum technology.</p> <p>Again, the background to this development is the concern about the sale of high technology to China and other countries classified as critical. The restraints caused by the interruption of supply chains during the COVID-19 crisis and the fears of comparable crises in the future have contributed to further legislative initiatives in order to extend the protection to the German health care sector as well.</p>
9.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>1961 the provisions for the control of foreign investments in Germany are mainly addressed by the German Foreign Trade and Payments Act (<i>AWG</i> or <i>FTPA</i>) and the German Foreign Trade and Payments Ordinance (<i>AWV</i> or <i>FTPO</i>) (together <i>German FDI Laws</i>). The scope of application of German FDI rules and the level of scrutiny applied in the review mainly depend from the relevant industry sector of the target company.</p> <p>German FDI rules differentiate between a sector-specific review and a cross-sectoral review:</p> <p>The sector-specific review sets out a strict review procedure for the (direct or indirect) acquisition by any foreign investor of at least 10 percent of the voting rights in German companies active in particularly sensitive security areas, such as defence and crypto-technology. This includes manufacturers and developers of war weapons, ammunition, military equipment such as tank motors and gears, and any technology used for processing classified government information. The completion of foreign investments of this kind is subject to the statutory <u>condition precedent</u> of a clearance by the Federal Ministry for Economic Affairs.</p> <p>(1) Under the cross-sectoral review, the Federal Ministry for Economic Affairs may examine whether the respective acquisition poses a threat to the 'public order or security' of the Federal Republic of Germany. According to Sec. 55 para. 1 sent. 2 AWV, acquisitions may in particular constitute such threat if the German target company is active in certain civilian security relevant industries, such as critical infrastructures, currently including energy, water, information technology and telecommunications, infrastructure used for finance or insurance, healthcare, transport or food). A cross-sectoral review regarding targets operating "critical infrastructures" is already triggered if at least 10 percent of the target's voting rights shall be acquired (Sec. 56 para. 1 no. 1 AWV). The completion of foreign investments of this kind is also subject to the statutory <u>condition precedent</u> of a clearance by the Federal Ministry for Economic Affairs.</p> <p>(2) In addition to the above, the Federal Ministry for Economic Affairs is entitled to review all (other) acquisitions of German companies (irrespective of the industry concerned) whereby investors acquire ownership of at least 25 percent of the company's voting rights (Sec. 56 para. 1 no. 2 AWV). The contemplated acquisition of such German companies does neither need to be mandatorily notified nor is a prior clearance decision required to close and complete a certain acquisition.</p> <p>For investments that are subject to sector-specific review, the investor <u>must apply for clearance</u> and initiate the review procedure by notifying the Federal Ministry for Economic Affairs of</p>

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	<p>the planned acquisition (Sec. 60 para. 3 sent. 1 AWW). The Federal Ministry for Economic Affairs will issue clearance where the review procedure reveals no threat to essential security interests (Sec. 61 AWW).</p> <p>For investments that are subject to the cross-sectoral review, the investor <u>must notify</u> the Federal Ministry for Economic Affairs of the planned acquisition if it falls within the category of "critical infrastructures" (as set forth in Sec. 55 para. 1 sent. 2 AWW). Alternatively, the investor <u>may apply for a certificate of non-objection</u> (Sec. 58 AWW). The certificate provides legal certainty that the transaction does not pose a threat to German public order or security.</p> <p>In addition to the foregoing, the Federal Ministry for Economic Affairs may initiate the review procedure in regard to any investment it learns of and that raises concerns with regard to the AWW. In this case, the Federal Ministry for Economic Affairs will officially inform the parties involved and require further statements and data (Sec. 55 para. 3 AWW).</p> <p>The review procedure consists of two stages: a preliminary examination and an examination in detail, including an investigation. In most cases, the review procedure is concluded within the first phase. The Federal Ministry for Economic Affairs will only enter into the second stage, a formal investigation, if the preliminary examination gives rise to concerns about the transaction's compliance with investment control rules.</p>
9.4	Outlook on the Future - short/medium term
9.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>As briefly outlined above, there is already a trend towards a stricter approach in German foreign investment review. In addition to several law-making initiatives aiming at broader screening rights and longer review periods (see sec. 9.4.2 below), the German government has even been invited by the Federal Ministry for Economic Affairs consider to intervene very important cases as an acquirer for a limited period of time in order to stop a foreign investment (see the strategic guidelines adopted by the Federal Ministry for Economic Affairs in the context of its "Industrial Strategy 2030").</p>
9.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>Again, the German government has been pushing for stricter national rules on foreign direct investment control. In parallel, the EU FDI Screening Regulation 2019/452 came into force in April last year. For the first time, it sets binding requirements with respect to investment control for member States.</p> <p>Amendment of the Foreign Trade and Payments Act (FTPA or AWG)</p> <p>In light of these developments, in January, the Federal Ministry for Economic Affairs presented a draft bill for legislation amending the Foreign Trade and Payments Act (FTPA). The German Federal Government adopted this draft in its meeting on 8 April 2020. It will now proceed to the German parliament.</p> <p>The adopted draft legislation tightens foreign direct investment control in three different ways. The most far-reaching amendment concerns the requirements for imposing restrictions on acquisitions within the scope of investment control. In line with the EU FDI Screening Regulation, it will become possible to restrict acquisitions even in cases of only "likely impairment" of public order or security. To date, the threshold for restrictions has been an "actual and sufficiently serious danger affecting a fundamental interest of society". Moreover, it will no longer be solely the interests of Germany that are taken into account in this lower standard of "likely impairment". The Federal Ministry for Economic Affairs will be able to consider the interests of other EU member States and the Union's interest in certain projects and programmes when justifying restrictions or prohibitions on the acquisition of companies and shares. The combination of both changes gives the Federal Ministry for Economic Affairs' broad powers to intervene in transactions.</p> <p>A second revision concerns the legal consequences associated with investment controls for transactions. In future, all acquisitions subject to reporting requirements – i.e. those involving particularly sensitive areas – are to be suspended until the Federal Ministry for Economic Affairs' approval. To date, this has only been the case in the defence and security sector. This change is accompanied by an amendment to Sec. 15 para. 4 FTPA, which will soon contain prohibitions currently only applicable to merger control law. Notably, their violation will be subject to criminal sanctions. In practical terms this means that the acquisition may not be executed until it is cleared. In particular, granting the acquirer an owner-like position in the company or access to security-sensitive information ahead of clearance is prohibited. In this way, the German government wishes to ensure that circumvention strategies do not thwart the purpose of investment control.</p> <p>Finally, a third amendment would bring the examination of foreign investments in the field of satellite and other remote sensing technology within the FTPA and the Foreign Trade and Payments Ordinance (FTPO). The separate Satellite Data Security Act previously regulated investment control in this area. Now, the protection standards will be harmonised. This change must be seen in light of the EU's interest in joint satellite programmes such as Galileo.</p> <p>15th Amendment of the Foreign Trade and Payments Ordinance (FTPO or AWW)</p> <p>In addition, the German Federal Government adopted the 15th amendment of the FTPO on 20 May 2020. The amendment is perceived as the Federal Government's direct reaction to the COVID-19 crisis, due to its concern in large part to protect the healthcare sector.</p> <p>The key change is the addition of five examples of entrepreneurial activity in the healthcare sector that, in the context of a cross-sectoral review pursuant to Sec. 55 para. 1 sent. 2 AWW,</p>

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	<p>could pose a threat to public safety and order. This concerns German companies that develop, manufacture or distribute personal protective equipment, essential medicines, medical products used against life-threatening and highly contagious infectious diseases or in vitro diagnostics.</p> <p>Furthermore, in the context of implementing the EU Screening Regulation, the Federal Ministry for Economic Affairs issued guidelines for the investor-related assessment of a risk. In particular, pursuant to Sec. 55 para. 1b AWV, it now takes into account</p> <ul style="list-style-type: none"> • whether the government of a third country is involved in the acquisition, • whether the acquirer has already been involved in activities which have had a negative impact on public safety and order, and • whether there is a significant risk of certain criminal or administrative offences. <p>Lastly, in addition to the healthcare sector and, the Federal Ministry for Economic Affairs placed another systemically relevant area under its control in order to protect German target companies that provide services in relation to state communication infrastructures (Sec. 55 para. 1 sent. 2 no. 7 AWV).</p> <p>16th Amendment of the Foreign Trade and Payments Ordinance (FTPO)</p> <p>Finally, there is already a 16th amendment of the FTPO under discussion. Such amendment is expected to further expand and tighten the German foreign investment control regime. It is aimed at a further implementation of the EU Screening Regulation and the proposed amendment of the Foreign Trade and Payments Act adopted already by the Cabinet on 8th April 2020 (see above). The 16th Amendment will extend the cross-sectoral review pursuant to Sec. 55 para. 1 sent. 2 AWV to certain “critical technologies” and thus cover foreign investments in German companies, which are active in the areas of so-called critical technologies, in particular artificial intelligence, robotics, semiconductors, biotechnology and quantum technology.</p>
9.5	<p>Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.</p>
	<p>Germany seems to have abandoned its traditionally liberal approach as it has substantially extended and tightened the foreign investment control regime over the past 3 years and in particular this year. While this has been subject to extensive discussion in the past (especially in the context of individual takeovers by Chinese companies), the EU Screening Regulation and the COVID-19 pandemic have strongly contributed to a growing awareness of the role of foreign investment screening and the willingness to intervene more strongly is constantly growing.</p>

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10. Greece	
10.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	One may argue that Greece historically balances between looking for foreign investment, through many political announcements or initiatives over time, and at the same time being critical and protectionist towards it, given the prolonged bureaucratic procedures. The economic crisis the country has experienced has significantly degraded the business climate. In 2015, the government imposed capital controls for four years, in particular to prevent the collapse of the banking system. This negative situation has discouraged potential new foreign investors. In fact, Greece has not managed yet to attract systematically significant foreign funds and is dependent on domestic capital, leading to an investment gap with negative impact on competitiveness and growth.
10.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	Following the many structural economic reforms undertaken since the economic crisis (and much more are still expected), foreign investors shall feel more welcome to invest in Greece, given the intentions of the governing political party as well. Traditional sectors of the economy, such as tourism and merchant marine are always encouraged, but also other sectors, like commercial and financial services, energy, real estate, transport and communication are being fast growing.
10.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	The Legislative Decree 2687/1953 as well as Article 112 of the Constitution, give approved foreign 'productive investments' property rights, preferential tax treatment and work permits for foreign managerial and technical staff. Law 4146/2013, entitled the 'Creation of a Business-Friendly Environment for Strategic and Private Investments' is the primary investment incentive law currently in force. It aims to improve the institutional framework for private investments, raise liquidity, accelerate investment procedures and increase transparency. The Greek government also established in 2014 Enterprise Greece, merging the previous Invest in Greece investment promotion agency with the Hellenic Foreign Trade Board to create a sole point of contact for investors. The 2013 law allows foreign buyers of property worth at least EUR 250,000 to obtain a five-year residence visa. The business start-up procedures can be carried out online via the Greek General Register of Commerce.
10.4	Outlook on the Future - short/medium term
10.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	Actually, such an increase of the state intervention is not expected to take place in a great extent. In fact, there are still an investment gap and increased investment needs (in general) in the Greek economy of about € 160bn until 2022 to fund companies, infrastructure projects and the Real estate market, which (needs) are not expected to be covered only by Greek funds
10.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	N/A
10.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	The prevailing trend to expand control mechanisms and expansive interpretation of investments, which fall under national issues of security and public interest, demonstrates the concern of States about the investment gaps that will arise (and that they shall be bridged by domestic funds) and the link between national security or public interest and issues with economic and investment dimensions, while also causes concerns about creating new constraints and barriers to investment as a modern tool of internal market protectionism. As a result, the investment environment may become more and more strict, increasing restrictions and obstacles to global investment, thus supporting protectionism dynamics.

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11. Ireland	
11.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	Ireland is liberal and welcoming to foreign direct investment ("FDI") – it has a proven track record as a successful location for both market-leading established and high-growth multinational companies from around the world. One-third of foreign multinational companies investing in Ireland have had operations here for over 20 years which illustrates the country's receptiveness to foreign investment. The Irish Government offers grants and a range of other supports to foreign investors who want to establish a presence in Ireland.
11.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	There have been no recent changes to the Irish position seeking to restrict foreign investment.
11.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>As an open pro-business economy, Ireland aims to be attractive to foreign investment in all sectors of the economy and there is no legal framework or state intervention which seeks to restrict FDI.</p> <p>Ireland's FDI policy has traditionally focused on positive State interventions (including the availability of grant aid in areas such as employment and R&D) and promotional activity to attract foreign -owned firms that are export-oriented, developing new activities in high-growth areas and creating high-quality jobs, thereby avoiding displacement effects elsewhere amongst domestically focused economic activities.</p> <p>Like all EU jurisdictions, Ireland currently has:</p> <ul style="list-style-type: none"> i. anti-money laundering/counter financing of terrorism laws which seek to prevent the use of criminal proceeds in investments; and ii. a sanctions regime which seeks to prevent various 'rogue nations' (their leaders including family members and associates) from doing business in Ireland. <p>Irish merger control/anti-trust rules apply in Ireland. The key purpose of this is to prevent any anti-competitive acquisitions or transactions and these do not include any foreign buyer restrictions/ criteria.</p>
11.4	Outlook on the Future - short/medium term
11.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>It is not expected that the Irish Government will independently/unilaterally increase/ introduce state intervention in the area of foreign investment, in the near future. However, Ireland, as an EU Member State, must implement Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the EU (the "Regulation"). The Regulation provides for the screening of FDI into the EU with the purpose of monitoring investment in strategic EU companies by foreign entities which raise security or public order concerns. The Regulation focuses on screening and control of FDI in three main areas:</p> <ul style="list-style-type: none"> i. cutting-edge technology and intellectual property where such technology or IP could transfer outside the EU; ii. key citizen's and business data sets; and iii. critical infrastructure and public utilities. <p>Potential foreign investors in Ireland should also note that, while the procedure and rules for employers/ employees to apply for, and obtain, employment permits for employees to work in Ireland has not changed there are some practical limitations arising from the Covid-19 pandemic. The process for employees who require both a work permit and a visa to work in Ireland (i.e. those employees who are from non-EEA and/ or non-exempted nations) is currently limited by the decision of the Irish Government to temporarily cease accepting new visa applications as part of its efforts to prevent the spread of Covid-19. These measures are temporary, and it is expected that Ireland will resume processing applications once the public health risks relating to Covid-19 abate.</p>
11.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)

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	<p>There are no legislative initiatives in place in respect of state intervention in the area of foreign investment, however as part of the implementation of the above Regulation, a public consultation process is ongoing as to its transposition into Irish law. This consultation is intended to inform the policy position that Ireland adopts in implementing the Regulation.</p> <p>Ireland does not screen foreign investment at present, nor is the State currently legally empowered to do so. The power already exists to intervene to guard against transactions that give rise to either competition and/or media plurality concerns. Ireland would need to introduce primary legislation to implement a formal FDI screening mechanism under the Regulation. It is anticipated that the Irish Government will look to adopt an approach which balances Ireland's continued attractiveness as a location for FDI, with a robust, but proportionate screening mechanism that protects security and public order.</p>
11.5	<p>Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.</p> <p>FDI has been, and will continue to be, a key pillar upon which Ireland's economy is built. Its contribution to the economy is far-reaching and it is estimated that 20% of all private sector employment in Ireland is directly or indirectly attributable to FDI. On this basis, the liberal approach to foreign investment in Ireland will continue. This is of course subject to any EU legislation such as the Regulation mentioned above.</p> <p>We predict that the Irish Government will in particular, as a result of the Covid-19 pandemic, look to continue to encourage FDI by businesses which produce and create availability of key supplies in Ireland (e.g. pharmaceuticals, medical technology, medical devices and medical supplies). However, it is also expected that this objective will be countered by the introduction by other influential countries of their own laws and measures in order to retain and/or repatriate businesses in these key areas. We reference US President Trump's recent comments relating to his objective to repatriate pharmaceutical manufacturing back to the US. We also refer to recent legislative reform in Germany aimed at tightening the rules relating to foreign investments in German companies, in particular, increasing governmental control over acquisitions of German target companies which are active in the healthcare and infection protection sectors by, among other measures, lowering control thresholds and introducing additional notification requirements.</p> <p>We expect in the aftermath of the Covid-19 pandemic there will be a trend towards restricting foreign investment in key pharma and medical supply corporations and this, combined with the introduction of the Regulation, will pose a degree of restrictions in European M&A in certain sectors.</p>

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12. Israel	
12.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Until the early 1970's, the Israeli economy was characterized as a socialistic and centralistic market, where most of the major players were state-owned, and foreign investments were not a significant factor. Most of the foreign capital injected to the local economy during these years was received as governmental financial aid from the USA and Germany. The Encouragement of Capital Investment Law was enacted in 1959 (the "<u>Investment Law</u>"), providing for grants and significant tax benefits for foreign businesses for establishing factories and R&D centers in Israel. This step consequently ushered in the hi-tech era in Israel a decade later, with the opening of development centers by global companies like IBM, Motorola, Intel and Philips – all of which are operating until this day, as the largest R&D centers outside the USA for most of these companies. Hyper-inflation in the mid 1980's brought major economic reforms which included separating the Bank of Israel from the government, lowering company taxes, large-scale privatization, reducing governmental expenditure and encouraging private initiative. Foreign investments skyrocketed and within a decade increased by 450% - a trend that persisted throughout the 1990's, with the expansion of the internet and regulatory actions taken to ease commercial relations with foreign countries, like the establishment of tax treaties and liberalization of foreign currency trade. In the wake of the dot com crisis, Israel further lowered the company tax, and improved the benefits of the Investment Law, resulting in a dramatic increase of foreign investment of 460% between 2004 and 2006. Another channel used to induce foreign investments was initiated in 2007, with the establishment of The Foreign Investment and Industrial Cooperation Authority, which operates under a dedicated law, mandating a 20-50% offset procurement under any contract the government executes with a foreign company. The growth in foreign investments currently continues, while the government further eases the threshold to enjoy the benefits of the Investment Law, as well as implementing other steps to encourage competitiveness in accordance to OECD guidelines. These include lowering of taxes imposed on companies, on capital gains, and on profits resulting from ownership of intellectual property.</p> <p>Restrictions on foreign direct investments (FDI) will be described in paragraph 12.3 below. At this stage, two specific areas where Israeli law is very restrictive regarding FDI can be found in land acquisition and foreign employment: (i) <u>Land acquisition</u> - Israel Land Law, 1960 restricts all transfer of land owned by the state to any foreigner, unless approved by the Chairman of the Israel Lands Council. The restriction applies with respect to the transfer of ownership or the leasing of State Land for a period of more than 5 years. This restriction in the context of the Israeli Basic Law: State Lands that defines State Lands, poses a severe restriction on land ownership by foreign investors in Israel as up to 93% of all land in Israel is State Lands. (ii) <u>Foreign employment</u> – Israel foreign employment regime is strict and no free flow of labor is permitted from any country or territory. Israeli law allows for foreign employment only in specific scenarios. For example, work that cannot be performed by Israeli employees, mainly in the agriculture and nursing industries, or foreign experts holding specific and unique expertise that is not available in Israel.</p>
12.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>The fact that Israel heavily relies on foreign trade is conspicuous when reviewing the biggest firms in the country, a large part of which are controlled by foreign entities. For example, the largest companies in the Israeli food market are controlled by multinational corporations such as Nestlé and the Chinese Bright Food Group; Israel's natural gas resources are exploited with the involvement of foreign companies like Noble Energy; and the largest Israeli communications group Bezeq, owning mobile, internet, satellite, and news companies, is controlled by an American fund.</p> <p>In recent years, the US government, having strategic economic and military ties with Israel, is expressing growing concern in relation to Chinese involvement in Israel, and the export of sensitive technology from Israel to China. This concern can be attributed, among the rest, to the recent Chinese involvement in strategic infrastructure projects in Israel such as the construction and operation of a commercial port in the city of Haifa, which is also used by US navy, the development of 5G cellular communications infrastructure and construction of numerous mass transit systems.</p> <p>As a result of the concerns emanating from the USA, and after Washington made it clear that it expects Israel to change its stance on Chinese activity in the country, the government's political-security cabinet decided in October 2019 on the establishment of an advisory committee (the "Committee") to review national security considerations within the regulatory approval process of foreign investments. The Committee shall be comprised of senior representatives from the Ministry of Finance, the Ministry of Defense, and the National Security Council, as well as observers from the Ministry of Foreign Affairs, Ministry of Economy, National Economic Council, and the Ministry of Finance. The Committee, which was started its operation in January</p>

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	<p>2020, aims to help regulators integrate national security considerations in what are primarily financial and economic considerations in the approval process of foreign investments. However, requesting the Committee's input is on a voluntary basis by regulators who are experts in the respective fields of the investment, and is not applicable for transactions that do not require governmental approval.</p> <p>This Committee is somewhat similar to the US Department of Treasury Committee on Foreign Investment in the United States (CFIUS) as well as to other such mechanisms established in countries like Australia, Canada, and Germany. However, in the Israeli case, the role of the Committee is only to advise the competent regulators, while lacking any legal authority of its own.</p> <p>Other than in the context of the newly established Committee, the National Security Council, as well as other security and cyber agencies, are also authorized to advise the government in connection with privatization of state-owned companies.</p>
12.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Yes. The legal framework applying to strategic infrastructure includes provisions requiring regulatory approval for the grant of licenses to service providers, as well as change of control in companies holding such licenses. These provisions can be found in legislation governing areas such as communications, electricity and natural gas. Among the authorities given by law to the respective regulators is the prerogative to require the holder of a license to be an Israeli resident or citizen, or to have a security clearance approved by the Israeli Security Service. As provided above, these regulators may now approach the Committee in order to better incorporate national security considerations as part of their decision-making process.</p> <p>Similar powers are granted to relevant regulators under the Governmental Companies Law-1975, which regulates, <i>inter alia</i>, privatization processes of state-owned companies. This law enables the minister in charge of a company undergoing privatization, to declare that the state has a vital interest in the company. A vital interest for the purpose of this law may be securing the continuous performance of provision of activities or services which are necessary to the country's security or foreign relations; preserving the center of the company's business in Israel; oversight over the control, exploitation and development of natural resources; promoting competition and preventing the formation of a centralistic market; prevention of hostile entities from obtaining a position from which such entities may influence the Israeli society; or prevention of disclosure of information which is confidential for reasons of national security or foreign relations.</p> <p>The control over a company in which the state has a vital interest could not be transferred without the consent of the relevant minister. In addition, the minister may also determine that the company shall conduct its business in Israel; that the control owner and any or all of the officers of the company must be Israeli residents or citizens or have an appropriate security clearance; and that the company takes certain steps to ensure the security of its computer systems and data bases.</p> <p>Specific examples of limitations include:</p> <ul style="list-style-type: none"> (a) <u>Land and real estate</u> as described in Section 12.1 above; (b) <u>Air Transport</u>: The licensing of an airline as an Israeli airline is conditional upon the holding of at least 51% of the capital by Israeli nationals in accordance with Licensing of Aviation Services Law (1963); (c) <u>Domestic Fixed Line Operator</u>: The control of a domestic licensed communications company must be held by an Israeli individual or a corporation incorporated in Israel in which an Israeli individual holds at least 20% interest; (d) <u>Radio and Mobile Telephone Services</u>: No more than 80% of the shares may be owned by a non-resident; (e) <u>Satellite Broadcasting</u>: At least 26% of the controlling interest in a licensee must be held by nationals who are residents of Israel; (f) <u>International Communications Services</u>: At least 26% of the controlling interest in a licensee must be held by nationals who are residents of Israel. A foreign operator may hold up to 49% of the controlling interest of a licensee; (g) <u>Communication</u>: In accordance with the Communication Law (1982) and Second Authority for Television and Radio Law (1990): Cable Broadcasting - at least 26% of the controlling interest in the licensee must be held by nationals who are residents of Israel, and a license shall not be granted to an applicant in which a foreign government holds shares, but the Minister of Communications may authorize an indirect holding in the licensee of up to 10% by such a corporation; Commercial Television - At least 26% of the controlling interest in the licensee must be held by nationals who are residents of Israel; Regional Radio - At least 51% of the controlling interest in the concession must be held by nationals who are residents of Israel; (h) <u>Electricity</u>: An applicant for a license to transmit, distribute or produce a substantial part of electricity may be required to fulfill certain conditions in accordance with Electricity Economy Law (1996) (terms re nationality and residence); and (i) <u>Education Services</u>: Cooperation between an affiliate of a foreign university and equivalent Israeli institutions is subject to the approval of the Council for Higher Education in accordance with The Council for Higher Education Law (1959). <p>Other legislation limiting international trade in Israel is the Trade with the Enemy Order of 1939, which was inherited by Israel law from the British mandate. This order prohibits any trade</p>

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	<p>with an entity which is currently in a state of war with Israel. Such prohibition is applicable mostly to countries with which trade is rarely carried out by Israeli companies, such as Iran. Transfer of arms and military technology and know-how is also regulated by the Ministry of Defense, under the Defense Export Supervision Law-2007.</p> <p>It should also be noted that in accordance with the Encouragement of Research, Development and Technological Innovation in the Industry Law-1984 (the "R&D Law"), Israeli tech companies which received grants from the Israeli Innovation Authority (IIA) are subject to approval and steep payment requirements in certain cases where such companies wish to transfer technology developed using IIA funding (or the production of products based thereon) to foreign countries. Furthermore, foreign investors acquiring shares of such companies are required to submit an undertaking to the IIA, committing to adhere to the R&D Law.</p>
12.4	Outlook on the Future - short/medium term
12.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>During May 2020, the US Secretary of State Pompeo came to Israel as he made his first visit outside the US after the Covid19 outbreak, meeting with the prime minister and heads of the security services. One of the stated reasons for the visit was to stress the US concern over Chinese involvement in Israel and the exposure to China such involvement entails. Sources in the Secretary's delegation were quoted saying that "the Corona crisis emphasizes the risks of trading with countries which maintain no transparency, which are not trading fairly, and which extort their trade partners".</p> <p>In light of the above, and with the Committee commencing its activity, one can reasonably expect that conducting business with foreign partners is to be more carefully scrutinized in the near future, at least to the extent such business involves strategic services and infrastructure.</p>
12.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>While up until now, there have not been any new top-level legislation initiatives regarding the limitation of foreign investments in Israel, however there have been a few indications of an imminent trend of strengthening local businesses in Corona times, which might turn out to be affecting foreign trade. These include campaigns encouraging the citizens to prefer Israeli-made products rather than imported equivalents; steps taken by the Competition Authority (formerly the Anti-trust Authority) to ease regulation and enable competitors to team up in order to overcome current strains; and limitation imposed on export of medical supplies needed to combat the Corona pandemic. It is not implausible that further steps will include more interventive measures to control international trade, in a manner less receptive to foreign investments.</p> <p>In addition to the above, like many other countries, Israel has closed its borders to foreign nationals, thus reducing to zero any foreign trade pertaining to the tourism industry.</p>
12.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>As Israel is only now recovering from the first wave of the Coronavirus, it might be too early to reliably foresee the impact of the pandemic on the local economy in general and on foreign investments. Considering the instrumental contribution of foreign capital to the thriving of the Israeli economy, it is hard to believe that the government should take drastic measures to reduce Israel's competitiveness as a target for investments at this point of time. Moreover, considering the severe implications of the pandemic on government spending, it seems that any injection of external funds, as well as any increase in production, should not be discouraged. One field that may be experiencing a major shift is technological manufacturing which is a focus point of Invest Israel (a governmental agency for the support of FDI in the Economy and Industry). Israel's substantial R&D sector, which is heavily depended on FDI, has already proven certain resistance to the effects of the Covid-19 pandemic outbreak and is a major engine of the Israeli economy. Israel's high-tech industry, which is the major receiver of FDI (an estimated 60% of Israel FDI in 2017), is expected to increase despite the Covid-19 pandemic and we may see an increase in governmental efforts to increase FDI in effort to streamline the economic recovery from the Covid-19 pandemic outbreak.</p>

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13. Italy	
13.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>In the last decades, Italy has followed a predominantly protectionist approach towards foreign investment. With the so-called Golden Share legislation, which was first introduced in 1994, the Italian government was able to exercise a veto or approval power over formerly state owned companies through a state owned share vested with specific powers. This was in order to protect public interest in sectors considered strategic such as public services, national defence, transport, telecommunications and energy.</p> <p>The power of the government in this context included opposition to the acquisition of significant shareholdings, conclusion of shareholder agreements as well as resolutions on transactions of particular significance. The exercise of the powers of the government had to be justified by “vital interests” of the state that were prejudiced by the measure in question.</p> <p>The protectionist attitude of the national legislation was criticized by European institutions and the Court of Justice subsequently declared the golden share provisions as contrary to the provisions of the EEC Treaty on the right of establishment, freedom to provide services and free movement of capital. Subsequently, the European Commission alleged infringement of Articles 43 and 56 of the EEC Treaty and imposed a sanction on Italy.</p>
13.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>Although the “protectionist” approach of the Italian government remained unchanged in recent years, the Italian legislation on state intervention on foreign investments has undergone several changes due not only to the current health emergency, but also to its non-compliance with European law.</p> <p>The Golden Power Law that came into force 2012 combines the determination of the Italian State to continue to have direct power over foreign investment in certain sectors considered of strategic importance or of national security, however respecting the free movement of capital and the freedom of establishment of business of articles 63 and 49 of the TFEU.</p> <p>In the face of the COVID-19 Pandemic the Italian state has increased national protectionism towards foreign investment by extending the screening procedure to sectors, which are deemed to be of national primary importance.</p>
13.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Area of Application</p> <p>The special powers which can be exercised by the Italian government are defined in the “Golden Power Law” (Law No. 56 dated 11 May 2012). Golden Powers can be exercised with regard to all companies, public or private, active in: (i) defence and national security, (ii) certain areas of strategic importance: Energy, transport and communications and 5G electronic telecommunications.</p> <p>a. Defence and national security</p> <p>Requirement for the exercise of special powers in the fields of security and defence is the existence of a serious threat to essential interests of defence and national security.</p> <p>In the area of defence and national security, the government can:</p> <ul style="list-style-type: none"> • impose specific conditions on the acquisition of holdings in companies in the field of defence and national security; • veto the adoption of resolutions relating to extraordinary operations or to operations having a particular relevance, including amendments to by-law clauses adopted with regard to limits on voting rights or share ownership; • oppose to the purchase of shareholdings, if the purchaser comes to hold a level of capital participation that could jeopardise the interests of the defence and national security. <p>b. Energy, transport and communications</p> <p>Assets of strategic importance in the field of energy, transport and communication include:</p> <ul style="list-style-type: none"> • National natural gas transmission networks and related compressor stations and dispatching centres; • Electricity and gas supply infrastructure from other States; • National electricity transmission network and associated control and dispatching facilities; and • Management activities related to the use of the networks and infrastructure referred to above points. <p>In relation to those strategic assets, the government can:</p>

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	<ul style="list-style-type: none"> • veto resolutions, deeds and transactions concerning strategic assets, in the presence of the requirements of the law, or impose specific conditions on it; • set conditions to the effectiveness of the purchase of shareholdings • oppose to the purchase itself if the buyer comes to hold, directly or indirectly, even through subsequent acquisitions, through intermediaries, person or through entities otherwise associated, a level of ownership of the voting capital that could compromise the interests of defence and national security in the specific case. <p>c. 5G electronic telecommunications</p> <p>In 2019, broadband electronic communications services based on 5G technology were defined activities of strategic importance for the national defence and security system, for the purpose of exercising special powers. The area of application includes contracts or agreements for the purchase of goods or services relating to the design, construction, maintenance and operation of networks for broadband electronic communications services based on 5G technology, which are concluded with non-EU subjects.</p> <p>Filing, Review Period and Sanctions</p> <p>In any of the areas of application a notification with full disclosure must be filed with the Presidency of the Council of Ministers within ten days after the occurrence of the following trigger events:</p> <p>a. Defence and national security: Adoption or signature of corporate resolutions, acts or transactions which create the threat of serious prejudice to the essential interests of defence and national security.</p> <p>Energy, transport and communication: Adoption or signature of corporate resolutions, acts or transactions having as their effect changes in the ownership, control or availability of the assets or having as their object the change of the corporate purpose, the dissolution, the merger or spin-off of the company, the transfer abroad of the registered office, the modification of statutory clauses concerning the introduction of limits on voting rights or share ownership.</p> <p>b. 5G electronic telecommunications: Signature of the agreements on purchase of goods or services.</p> <p>The Italian government has 45 business days (30 days in case of 5G electronic communications) ("Review Period") to review the filing and exercise its special power. The Review Period may be extended only once, for a maximum of (i) 10 additional business days, if the Italian government requests additional information from the filing person or (ii) 20 additional business days, if the Italian government requests additional information from a third party. With the entry into force of the EU FDI Screening Regulation (see below nr. 13.4.1) in case of review of the transaction by another EU Member State or the EU Commission, the Review Period is suspended (for a maximum of 35 days) until the observations or opinions by the EU Member State or the Commission have been delivered. The Italian Government can however give its clearance before the receipt of such opinion or observation if an urgent action is required for national security or public order reasons. If the Italian government does not issue clearance, extend the Review Period, or exercise its powers to block or impose conditions before the end of the Review Period, the transaction can be deemed tacitly cleared (<i>the administration loses its faculty to exercise its powers</i>) and can be implemented.</p> <p>In case of non-compliance with the filing obligation, the purchaser can be fined for an amount not less than 1% of the cumulative global turnover realized by the companies involved in the transaction (up to twice the value of the transaction), or with respect to 5G technology agreements, not less than 25%, up to 150%, of the value of the transaction.</p>
13.4	Outlook on the Future - short/medium term
13.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>Since the Covid-19 pandemic outbreak, the Italian government has adopted a series of measures with the aim to protect the weakened economy and the businesses affected by the severe economic conditions. The measures adopted to tackle the COVID-19 crisis affect investments in various ways and the state intervention strengthen the protectionist attitude by supporting domestic enterprises in strategic and non-strategic areas against foreign investors (please see below).</p> <p>The Government is about to adopt a new decree that will extend the possibility of exercising the special powers of Golden Power to other sectors considered "critical" including banks, financial institutions and the Italian Stock Exchange..</p> <p>Moreover, on 11 October 2020 the FDI Screening Regulation will enter into force, establishing a framework for the screening of foreign direct investments in the EU. The FDI Screening Regulation will not replace the existing mechanism of the Golden Power Law. It will establish an EU-wide mechanism of cooperation and coordination of national screening procedures for new foreign direct investments. Thanks to this mechanism, EU Member States or the EU Commission may have the opportunity to raise observations or opinion which will not be binding and could not block or unwind the investment in question. Furthermore, in light of the current COVID-19 crisis and its severe implications for the EU economy, the EU Commission stepped up efforts to strengthen the protection of EU companies through the FDI Guidelines on the protection of European strategic assets and technologies. Also, the FDI Guidelines set forth only general principles on screening of investments applicable to all EU Member States and will not amend or replace the Golden Power Law (see Section 1.3 and 1.4.2 above for more details).</p>

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	on FDI Screening Regulation and FDI Guidelines).
13.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>On 8 April 2020, in response to the COVID-19 emergency and following FDI Guidelines the Italian government issued the "Liquidity Decree", containing special measures for the protection of Italian assets.</p> <p>The Liquidity Decree amends the Golden Power Law and expands the list of strategic sectors, mirroring the industry sectors identified in the FDI Screening Regulation to the following:</p> <ul style="list-style-type: none"> (i) Critical infrastructure (such as water, health, media, data processing or storage, electoral or financial infrastructure, and sensitive facilities); (ii) Critical technologies and dual use items (including AI, robotics, semiconductors, cybersecurity, energy storage, quantum computing and nuclear technologies as well as nano-technologies and biotechnologies); (iii) Supply of critical input, including raw materials, as well as food security; (iv) Access to sensitive information, including personal data, or the ability to control such information; (v) Freedom and pluralism in the media; and (vi) Banking, finance and insurance sectors. <p>Additionally, the Italian Government has extended the scope of the rules on foreign direct investment.</p> <ol style="list-style-type: none"> 1. Any individual or entity wishing to invest in the above sectors is subject to the Golden Power rules, even though the Government has not yet issued the implementing rules on the application of such enlarged Golden Power. 2. If the parties to a transaction involving a "strategic" company do not comply with the obligation to file the required communication, the Government is entitled to exercise its Golden Power independently and in the absence of notification. In this event, the Review Period starts from the date the Government determines that a breach of the obligation to notify has occurred. 3. Until 31 December 2020, the Golden Power will apply also: <ul style="list-style-type: none"> (i) to transactions within the European Union when, as a result of the transaction, the purchaser would acquire control of the Italian "strategic" company; and (ii) to extra EU transaction when, as a result of the transaction, the purchaser would hold a participation in excess of 10% of the corporate capital of the "strategic" company, if the value of the transaction is in excess of EUR 1 million, and when the purchaser would hold participations in excess of 15%, 20%, 25% and 50%.
13.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>The long-term policies that will be implemented on foreign investments are yet to be seen and are likely to vary. There is a great deal of uncertainty in the transactional space, Stock markets have plummeted and many companies are having to grapple with the economic damage. This unprecedented environment leads many potential investors to take a cautious approach before committing to significant transactions, while on the other hand could afford opportunistic buyers the chance to acquire or invest in companies that have been weakened by the crisis.</p> <p>As the national legislation shows, Italian government have decided to tighten the screening mechanism on foreign investment, by expanding the scope and the sectors in which the Golden Power can be exercised. At present, some of these tougher measures will last up to 31 December 2020, while on 11 October 2020 the FDI Screening Regulation will enter into force, following the already existing EU protectionist <i>modus operandi</i>. During this time, although most cross-border transactions have a high likelihood of being approved, those in strategic sectors may encounter more scrutiny and face a prolonged approval process with a final result not always pro investment.</p> <p>When it comes to the long-term future, another aspect to consider is that the national measures to address the immediate economic fallout will also need to comply with international law. Therefore, it will be crucial for Italy to adopt measures that are reasonable and non-discriminatory.</p> <p>A look at the last years of governmental power suggests that the State is likely to play a very important role in the economy, not just during the crisis, but long after it. What is difficult to foresee is whether the general protectionist approach towards foreign investment will mainly remain the same, or the weaknesses of the Italian economy (and the consequent need of foreign investment) will in the end lead to a change of route moving in the direction of liberalism.</p>

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14. Luxembourg	
14.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Over the past decades, Luxembourg has been liberal and welcoming towards foreign investment and managed to build a solid reputation as a renowned financial centre in Europe. Factors such as its geographical position, political stability, multilingual workforce, innovative spirit and business-friendly attitude have greatly contributed to attracting multiple sources of foreign direct investments in the country. These special features are largely recognised by worldwide organisations, which consider Luxembourg to be one of the most open economies in the world¹.</p> <p>As a founding member of European bodies, including Benelux and the European Coal and Steel Community (which later become the European Union), Luxembourg has long benefited from the four freedoms promoted within the European Single Market (free movement of goods, services, capital and persons) to drive substantial direct investments from other Member States towards the country and create strong economic ties with these jurisdictions.</p> <p>The attractiveness of the Luxembourg economy goes even beyond the territory of the European Union. Apart from countries with mature economies, Luxembourg has also sought rapprochement with relatively more recent key economic partners which have recognised the country's potential as a gateway to channel investments to Europe. This approach has led investors located in third country jurisdictions to take control of some of the largest undertakings in Luxembourg.</p> <p>The Luxembourg lawmaker has facilitated access to foreign investors through the adoption of legislative instruments, such as those supporting the growth of the banking and investment fund industries. This welcoming attitude has in particular enabled Luxembourg to become the second largest investment fund centre in the world and the largest one in Europe.</p>
14.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>At national level, there has been no recent change in the open approach that was initiated several decades ago. Luxembourg has continued to mobilise its resources to gain new business partners, notably through the promotion of further attractive fields, such as start-ups, FinTech, green finance or space resources.</p> <p>Nevertheless, Luxembourg has yet to adopt a new legal framework to comply with European Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investment in the Union (the "FDI Screening Regulation"), which will become applicable as of 11 October 2020. The FDI Screening Regulation requires Member States to adopt, maintain or amend screening mechanisms on the grounds of security and public order in relation to foreign direct investments originating from third countries. Although the ultimate screening decision remains with the relevant Member State, the FDI Screening Regulation enables other Member States and the European Commission to express their concerns (through comments and opinions, respectively) in respect of the impact of foreign direct investments on security or public order. This mechanism also applies to foreign direct investments which are not required to undergo any screening process in the Member State concerned. Moreover, if the foreign direct investment affects European Union projects or programmes, the European Commission will issue an opinion thereon and the Member State concerned will have to provide explanations if it intends not to follow the views expressed by the Commission.</p> <p>A bill of law (7578/00) was introduced in the Luxembourg Chamber of Deputies (Chambre des Députés) on 7 May 2020 and was declared admissible for review on 19 May 2020 (the "FDI Screening Bill").</p> <p>According to the FDI Screening Bill, an authorisation must be sought by any third country (i.e., non-EU) investor or a company controlled by such investor, which intend to acquire a significant influence (i.e. over 10% of the share capital or the voting rights) of one or several undertakings (or any part thereof) located in Luxembourg. To the end, the Luxembourg Minister for Economic Affairs (the "Minister") must be notified of the intended investment and must be provided with all supporting documents listed in the FDI Screening Bill. The Minister must communicate his/her decision on the proposed investment within three months after receipt of the complete notification file. Should no decision be communicated within this timeframe, the investor is authorised to proceed with the transaction. Conversely, the Minister can refuse the investment if he/she is of the opinion that such transaction would contravene Luxembourg public order or be contrary to essential national or European interests. The Minister can also define a number of conditions to which the authorisation will be subject.</p> <p>Failure to comply with the authorisation process described in the FDI Screening Bill carries a term of imprisonment of 5 to 10 years and/or a fine, the amount of which cannot exceed (i) two times the amount of the foreign investment, (ii) 10% of the annual turnover (exclusive of taxes) of the undertaking in which the foreign investment was made, or (iii) EUR 5 million per inves-</p>

¹ For instance, the OECD's Foreign Direct Investment Regulatory Restrictiveness Index ranks Luxembourg as the first OECD country having the least restriction on foreign direct investment (2018) (<https://goingdigital.oecd.org/en/indicator/74/>). In addition, the most recent version (2017) of the Open Markets Index published by the International Chamber of Commerce (ICC) ranked Luxembourg as the third most open economy in the world after Singapore and Hong Kong (<https://iccwbo.org/content/uploads/sites/3/2017/07/2017-ICC-OMI-OPEN-MARKETS-INDEX.pdf>). The openness of the Luxembourg economy has also been highlighted in a number of reports by international organisations, such as the 2019 Article IV Consultation on Luxembourg made by the International Monetary Fund – IMF (<https://www.imf.org/~media/Files/Publications/CR/2019/1LUXEA2019001.ashx>).

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	tor. Identical sanctions apply if the authorisation was granted on the basis of false information, if the conditions to which the authorisation is subject are not complied with, or if directions given by the Minister are only complied with partially. Moreover, administrative sanctions can also be imposed by the Minister (including the suspension of all or part of the voting rights in the acquired undertaking, the suspension of any distribution of dividends at the lever of the undertaking, or the prohibition, restriction or suspension of the use of the assets linked to the activities of the undertaking).
14.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	The legal framework existing in Luxembourg prior to the outbreak of the Covid-19 pandemic did not include any provisions of any sort of which would restrict foreign direct investments ² , except for certain areas resulting from EU regulations such as air transport ³ , transport of goods or passengers by inland waterway ⁴ . The FDI Screening Bill, which seeks to introduce into Luxembourg law measures for the implementation of FDI Screening Regulation is going through the legislative process for its adoption by the Chamber of Deputies (Chambre des Députés).
14.4	Outlook on the Future - short/medium term
14.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	Luxembourg has yet to adopt a framework for screening on the grounds of security and public order for foreign direct investments in order to comply with the provisions of the FDI Screening Regulation (which will become applicable as of 11 October 2020). The current version of FDI Screening Bill allows the Minister to refuse to authorise a potential foreign investment made by a third country investor (either directly or through a vehicle located in one of the Member States of the European Economic Area) on the ground of national public order or if such refusal is necessary to preserve national or European interests.
14.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	The FDI Screening Bill was declared admissible by the Luxembourg Chamber of Deputies (Chambre des Députés) and will undergo the various steps leading to its formal adoption into law (see 14.2 above for a short description of the content of the FDI Screening Bill).
14.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	In light of the political approach that has traditionally been taken vis-à-vis foreign direct investments and given the necessity for the country to maintain a relatively open economy because of its status as an important financial centre in Europe, one would expect that Luxembourg will not depart from its liberal attitude towards global investments on the national level. The FDI Screening Bill confirm this view, while introducing an authorisation mechanism, as required by the FDI Screening Regulation, in order to prohibit some third country investments on the ground of national public order or to preserve national or European interests (such as the protection of strategic industries, and in particular, the healthcare sector, which is considered as even more crucial since the outbreak of the Covid-19 pandemic).

² According to the latest version (15 April 2020) of the list of existing national screening mechanisms in member States, which was published by the European Commission pursuant to article 3(8) of the FDI Screening Regulation, Luxembourg has implemented any screening mechanism regarding foreign direct investments (see https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf).

³ Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community: This regulation requires a company operating air carrier services in the EU must carry an operating license. One of the conditions to get such licence is that the operating company must be owned more than 50% by EU nationals.

⁴ Council Regulation (EEC) No. 3921/91 of 16 December 1991 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State and Council Regulation (EEC) No. 1356/96 of 8 July 1996 on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services.

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15. Norway	
15.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Norway has historically been protectionist against foreign investment in certain sectors that is seen vital to Norwegian interest, especially sectors relating to the usage of natural resources. This was liberalised with the EEA agreement, while the Security Act of 2018 have again reversed this for businesses of vital strategic interest, ref. below. In short, the continuous trend towards a more open economy may now be reversed (to more protectionism), but for different reasons than before.</p> <p>It started with the first act in 1888 which required concession for non-Norwegians to buy land (or user rights to land). While first being motivated by the fear of non-Norwegians buying a lot of (cheap) land, the desire to protect natural resources (waterfall, minerals, forests) soon also became an important motivation. In acts from the beginning of the last century, and the Industry Concessions Act of 1917, this was extended to include ownership in companies that otherwise would require concession if bought directly. The Concessions Act of 1974, supplemented and changed within its scope the Industry Concession Act, stating that acquisition of land in general was subject to concession regardless of nationality, a requirement still being valid today. In 1974 a stricter regime as to what percentage of share ownership being subject to concession was also implemented, for both laws. The discrimination against other EEA members ended with Norway entering into the EEA agreement. Today the Industry Concession Act is related to waterfalls only, giving the state almost all rights to such.</p> <p>The Acquisitions Act of 1994 came into force in 1995 and was applicable for both Norwegians and non-Norwegians acquisitions of shares/parts of Norwegian companies and for acquisitions of assets that had the effect that the buyer took over a business in Norway. Hence, it was not specifically directed against foreign investments. A concession could be given on terms or without terms. A concession had to be given unless general public interests (substantial negative effects for the business, the industry or the society in general, including local employment) was against it. Up until 2001 the Department of Trade and fisheries had received 2.147 notifications, but only 13 of these had been scrutinized closer. Of these none had been rejected and in eight cases the concession was subject to fulfilment of certain conditions. After the EFTA Surveillance Authority (ESA) sent a letter of formal notice, claiming that the act infringed the freedom of establishment and free flow of capital, not being justified by compelling public interest and fulfilling the requirement of proportionality. The Norwegian government disagreed, but the act was repealed before ESA had concluded. And even if the act to some extent had been used to require information of the owners plans with the company, and therefore implicitly to what extent it affected issues of national security, it was concluded that the act did not have this as a primary purpose.</p> <p>Around the same time, the Security Act of 1999 protecting vital strategic interest, was put into effect (2001). However, it did not have any regulation on ownership control, which is now implemented in the new Security Act of 2018 (in effect from 2019). It is stated in the preambles that Norway needed an entirely new security act, especially due to the changes in the society, advancing technology, new risks and threats, and the obligation for a society to take care of its citizens security (including security precautions and secure delivery of essential goods and services).</p> <p>The trend therefore seems to be (or at least may be) towards more protectionism, but for different reasons than before.</p> <p>See also Section 15.3 (for a more complete overview of other general rules relating to ownership).</p>
15.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>Yes, for security reasons and the increasingly more sophisticated threats to democratic societies, ref. The Security Act mentioned above.</p> <p>However, The Security Act is quite new, and it does not seem that the respective departments yet have fully concluded on which private businesses should be covered by the act. The vulnerability of a society, and its dependency on its different parts, fully evidenced by the pandemic, could however spark some renewed interest into what type of businesses that will be covered (once the pandemic leaves room for planning ahead).</p>
15.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Yes, see Section 15.1 above.</p> <p>The Security Act is applicable for suppliers processing classified information, including security graded information. Further, it is applicable - if the relevant department decides – for businesses that contains information regarding and/or operate assets etc. with "<i>basic national functions</i>", for the protection of (Norwegian) vital strategic interests. Such may include financial</p>

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	<p>and payment services, electricity supplies, health services, food supply, electronic communications, and other industries.</p> <p>However, this does not give a complete picture unless an overview is given regarding the Norwegian states ownership policy (the Norwegian state owning in excess of 30% of the value of all shares on the Norwegian Stock Exchange, depending on the daily value of Equinor ASA). The state categorizes the companies in which it owns shares in four categories (preamble to the new act, in its last ownership report this was divided in three categories):</p> <ul style="list-style-type: none"> - Companies with purely economic goals (maximize investments, no minimum share capital ownership) - Companies with economic goals and reasons for corporate main office in Norway (defence manufacturer, Norsk Hydro, Statoil and Telenor, at least one third of the shares owned, giving a veto right for changes to the articles of association) - Companies with economic goals and other specific sector defined purpose (postal service, electricity production, train service, etc. – the non-economic purpose being taken care of with concession requirements, regulations and purchase of services from the companies). - Companies with specific sector defined purpose (space centre, airport control, gas and petroleum ownership, ownership of electricity lines, regional health companies, etc.). <p>Also, to be noted is the ownership limitations in place for the financial industry, and many other sectors. Even if these are not meant to be discriminatory against foreign buyers, they do limit or hinder a take-over. Many industrial sectors (also) have sector specific regulation requiring concessions to operate or take part in the industry (finance, insurance, telecom, fisheries, etc).</p> <p>The ownership limitations and the sector specific regulations has both as its purpose to safeguard well-functioning vital sectors, a purpose that to some extent is overlapped by the Security Act.</p> <p>Even if not mentioned yet, the above sectors and reasoning may therefore be of relevance for the assessment to be made by the different departments in relation to the Security Act.</p>
15.4	Outlook on the Future - short/medium term
15.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	It would not be a surprise if the government and the different departments due to the experience from the pandemic renew its assessment on what is basic national functions. It would probably be a wide assessment, not only related to health services and health equipment.
15.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	Not to our knowledge.
15.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	We expect that there is a renewed interest in keeping certain installations and businesses owned by Norwegian companies. This may to a large extent be fulfilled through regulation and concession requirements as today. However, the more protectionist arguments will probably prevail due to what is taking place right now (pandemic) and the argument of rather being safe than sorry.

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16. Poland	
16.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>Since 1989 the transition from a centrally planned economy to a capitalist economy was not possible without the great capital expenditure of foreign investors hence it was mostly liberal and welcoming. Additionally due to accession to the European Union, Polish law has implemented many Community laws aimed at improving the flow of capital between EU Member States. Researches show that in 2019 Poland was placed on the podium of countries from Central and Eastern Europe in terms of how attractive Polish market is to foreign investors. The main reasons for this are specified in law the special economic zones (now rarely found in the EU) and industrial and technology parks – both of which are associated by foreign investors with benefits in the form of reduced operating costs, tax reductions, business support as well as the right to apply for assistance under the provisions regarding financial support for investments. In addition, establishment of a company in Poland was and is relatively simple, e.g. to start operating in the form of the most popular capital company, i.e. limited liability company (spółka z ograniczoną odpowiedzialnością) only EUR 1,096 (PLN 5,000) of initial share capital and submission of relevant documentation in the Polish register of entrepreneurs are needed. This process is not expensive and most applications can be submitted online. Accounting rules also has also been made easier by adopting EU regulations into Polish law. Until now the main limitation for foreign investors were regulations limiting their ability to (i) acquire real estate (in particular agricultural and forestry) in Poland, and (ii) conduct their activities in e.g. public order or safety, or public health.</p>
16.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>Yes. Recently due to the electoral win of the right-wing Law and Justice party in the parliamentary and presidential elections, the position regarding foreign investments has changed. As the ruling party has the majority of votes in Sejm (the lower house of Polish parliament) since two terms, the more liberal parties have de facto minimal influence on the Polish legislation. The hostile approach to foreign capital and ongoing political and social disputes regarding changes in law, have been noticed by i.a. European Commission which has repeatedly pointed out the need for changes in the approach of Polish government.</p> <p>Foreign investors seem to take into account that Polish law has ceased to be clear and predictable (e.g. continues discussions regarding increase of taxes and creating new ones, e.g. digital tax), justice system is no longer stable (e.g. paralysis of the Constitutional Tribunal), and that Poland is more often criticised internationally due to the above. All these factors result in decrease in interest of investing in Poland.</p>
16.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	No. Currently, most of the regulations regarding support granted to entrepreneurs concern companies with Polish, not foreign, capital. The newly created so-called Anti-crisis Shield (including the Financial Shield) contains provisions excluding from its use, i.a. (i) beneficial owners of Polish enterprises, if they do not have their registered office/place of residence in Poland or do not settle their taxes thereto, and (ii) branches of foreign entrepreneurs who i.a. cannot apply for co-financing of remuneration for their employees.
16.4	Outlook on the Future - short/medium term
16.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	No. Please see point 16.4.2. below
16.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>At the end of April 2020, the polish government prepared draft of act regarding the requirement to notify state authorities about planned acquisitions of Polish companies. The main reason for implementing this law was to protect Polish companies against “easy” sale to foreign entrepreneurs, mainly from outside the European Union.</p> <p>Due to how general these rules were and the intervention of Polish organisations of entrepreneurs and investors (including Polish Private Equity and Venture Capital Association), further work on this act has been suspended until further notice. There is no information as to whether the Polish government will return to work on this project.</p> <p>In addition, a gradual reduction of foreign capital in Polish media, banks and the retail industry has been planned for several years - detailed plans are not yet known.</p>
16.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	Since the effects of the return to a more conservative (right-wing) domestic economy by a significant number of countries are already visible, most countries will probably want to gradually return to a more liberal foreign policy. This trend is already visible in Poland, where the dissatisfaction of citizens (including mainly entrepreneurs) increases from month to month. The im-

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	pact of the COVID-19 pandemic on the global economy and the deterioration of individual national economies (mainly through financial support) may result in countries looking for opportunities for a wider opening to foreign investments in order to benefit from additional, missing capital.
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17. Russia	
17.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>The Russian jurisdiction cannot be expressly qualified under one of the above categories.</p> <p>As a general rule, the legal regime of operation by foreign investors and their use of the revenues from the investments is equivalent to that of Russian investors ("principle of national treatment"), yet, with certain exceptions provided by federal laws.</p> <p>On the other hand, a protectionist approach prevails in the strategic sectors of the Russian economy, and any transaction on establishing control over strategic companies by foreign investors requires preliminary approval by the Governmental Commission for Control over Foreign Investment (the "Governmental Commission").</p> <p>In addition, restrictions on the foreign participation over certain thresholds in the authorized capital are provided for mass media. The 50 % quota was introduced for foreign capital participations in the aggregate capital of lending and insurance institutions operating in the Russian Federation. Also foreign investors are restricted in the right to hold and use certain types of lands or subsoils.</p> <p>The Russian Government may choose to use a special right ("golden share") to a joint-stock company, when the latter is being privatized, in order to secure the state defense and the national security. Based on the "golden share", the state shall appoint its representatives to the BoD of a joint-stock company, who shall also attend the general shareholders meeting and enjoy a veto right in the decision-making on amending of the charter, company reorganization or liquidation, changing of the authorized capital and entering into major transactions.</p> <p>In 1999, the Law on Foreign Investment was adopted mainly to set a national regime for foreign investors. Absent detailed legislative regulation of the terms for access of foreign investment to the most sensitive sectors of the Russian economy, the Russian Government would deal with the national security matters using antimonopoly tools in control over the economic concentration.</p> <p>To that end, in 2008, they adopted the Law on Foreign Investment in Strategic Industries, whose main purpose is to set statutory restrictions for foreign investors on their transactions and actions with regard to Russian strategic companies, in order to secure the state defense and the national security. A strategic company is a Russian company engaged in at least one of the 46 strategic activities listed in the Law on Foreign Investment in Strategic Industries (e.g., manufacturing of arms and military machinery; space operations; development, manufacturing and distribution of encryption facilities; study of subsoils and/or exploration and extraction of natural resources on the subsoil plots of federal importance).</p>
17.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>The Russian jurisdiction's approach to regulation of foreign investment has not materially changed recently. Yet, control over foreign investment has been increased to secure the state defense and the national security.</p> <p>In July 2017, the Chairman of the Governmental Commission (who is also the Chairman of the Russian Government) was authorized to decide on whether any transaction involving a foreign investor shall be submitted to the Governmental Commission as per the procedure provided by the Law on Strategic Investment in order to secure the state defense and the national security.</p> <p>In 2018, there was introduced a new regulation on determination of control of a foreign state over strategic companies. Indeed, participation of a foreign state shall be determined in aggregate, i.e. the shares of each foreign state shall be cumulated to determine whether control may be established to aggregately dispose, whether directly or indirectly, of 50% in a strategic company.</p> <p>There was also introduced a new type of foreign investors: foreign investors failing to provide the details of their beneficiaries, beneficiary owners and controlling persons. A foreign investor intending to enter into a transaction relating to a strategic company should first disclose the details of its controlling persons, beneficiary owners and beneficiaries in compliance with the regulations for disclosure of such information approved by the Russian Government. Where no disclosure was made in advance, such investor shall be deemed "undisclosed" (the "undisclosed investor"), and special requirements shall apply to their respective transactions. Specifically, just as foreign states or international organizations, foreign investors failing to disclose the above details shall be prohibited from establishing control over strategic companies.</p>
17.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>I. In the Russian Federation, there is preliminary and follow-up control over foreign investment in strategic companies.</p> <p>Preliminary Control by the Governmental Commission applies to:</p> <p>1. Transactions involving foreign investors with regard to any Russian companies, where:</p> <p>A. transactions are entered into by foreign investors controlled by a foreign state (foreign states) or an international organization (international organizations), where they are acquiring a right to dispose of over 25% of shares (interests) in Russian business companies or a right to block decisions taken by the governance bodies of such companies.</p>

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	<p>B. the Chairman of the Governmental Commission took a decision to consider a transaction involving a foreign investor with regard to a Russian company as per the procedure provided by the Law on Foreign Investment in Strategic Industries.</p> <p>2. Transactions with regard to strategic companies, where:</p> <p>A. a foreign investor is entering into a transaction (or taking an actions) leading to establishment of control over a Russian strategic company (direct or indirect disposal of over 50% of votes, appointment of over 50% of the BoD members or the CEO, or another opportunity to affect decisions by the governance bodies).</p> <p>B. a foreign state, an international organization or an undisclosed investor is entering into a transaction leading to acquisition of a right to directly or indirectly dispose of over 25% of shares (interests) in Russian business companies or a right to block decisions taken by the governance bodies of such companies.</p> <p>3. Transactions and other actions with regard to strategic companies using the subsoils of federal importance (the “subsoil operator”), where:</p> <p>A. a foreign investor is entering into a transaction, which results in establishment of control over the subsoil operator (which in this case shall mean disposal, whether directly or indirectly, of over 25% of votes, appointment of over 25% of the BoD members or the CEO, or another opportunity to affect decisions by the governance bodies).</p> <p>B. a foreign state, an international organization or an undisclosed investor is entering into a transaction leading to acquisition of a right to directly or indirectly dispose of over 5% of shares (interests) in a subsoil operator.</p> <p>Preliminary approval provides for applying to the Federal Antimonopoly Service of Russia and submittal of documents listed in the Law on Foreign Investment in Strategic Industries. Consideration might take from 6 to 9 months.</p> <p>Follow-Up Control (Notification) applies to:</p> <p>A. acquisitions by any foreign investor of a right to dispose of over 5% of shares (interests) in a Russian strategic company,</p> <p>B. transactions or other actions pre-approved by the Governmental Commission.</p> <p>A foreign investor shall submit a notice of a transaction within 45 days from the entering into such transaction.</p> <p>II. In certain economy sectors, there is a particular procedure for control over compliance with the restrictions on foreign participation in the capital, and this control is exercised by the industry regulator, for instance, by the Bank of Russia as related to insurance and lending institutions, and by Roskomnadzor as related to mass media.</p> <p>1. Insurance</p> <p>Subsidiaries of foreign investors or insurance companies having over 49% of their authorized capital contributed by foreign investors have a right to lead insurance business in Russia if the foreign investor is an insurance institution under the law of the foreign state for not less than 5 years. They cannot insure in the Russian Federation life, health or property of people using the funds allocated for these purposes from the respective budget to federal executive authorities (insurers), or offer insurance related to procurement of goods, works or services for the state needs, or insurance of the property interests of state institutions</p> <p>An insurance company shall obtain a pre-approval from the Bank of Russia to increase the amount of its authorized capital with fund coming from foreign investors and/or their subsidiaries, and to dispose to them their shares (interests in the authorized capital), while Russian shareholders (members) shall obtain a pre-approval from the Bank of Russia to dispose of their shares (interests in the authorized capital) of an insurance capital to foreign investors and/or their subsidiaries. Those pre-approvals shall be valid for one year.</p> <p>If the amount (quota) of the foreign capital participation in the aggregate authorized capitals of insurance companies in Russia exceeds 50%, the Bank of Russia shall deny approval of the transaction. Moreover, the Bank of Russia shall no longer grant insurance licenses to insurance companies that are subsidiaries of foreign investors (parent companies) or having over 49% of their authorized capital contributed by foreign investors.</p> <p>2. Banks and other lending institutions</p> <p>In 2015, a 50% quota was also introduced for foreign capital participations in the aggregate capital of lending institutions operating in the Russian Federation.</p> <p>Prior to 2015, there had been a possibility to set such quota but no quota approved. Should the quota be exceeded, the Bank of Russia shall be entitled to deny registration of lending institutions with foreign investments and to prohibit increase of a bank’s authorized capital using funds coming from foreign investors.</p> <p>3. Mass Media</p> <p>In 2014 the following restrictions were adopted in terms of foreign investor participation in mass media business. It is prohibited:</p> <p>A. for a foreign entity, state, international organization or a Russian entity with any foreign participation to be a founder of a mass media organization, a mass media editorial office, or a broadcaster;</p> <p>B. for a foreign entity or Russian entity with more than 20% of foreign participation (whether owned individually or collectively) to exercise directly or indirectly ownership, management or control over more than 20% of a participant of the mentioned entities or to establish any other forms of control over the mentioned entities (which means any de facto</p>
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	right to otherwise determine decisions of the relevant entities).
17.4	Outlook on the Future - short/medium term
17.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	State intervention is unlikely to be increased in the near future. Despite the COVID-19 pandemic, legal regulation of foreign investment has remained unchanged. Foreign investor applications for pre-approval of transactions or other actions with regard to Russian companies are considered in due course.
17.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	There are currently no law-making initiatives meant to increase state control over foreign investment, of which as related to COVID-19.
17.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	It can be said that a thorough analysis and collection of the details of foreign investors' actual owners is being increased. A particular focus is made on state-owned foreign investors, as well as undisclosed investors, as those persons are prohibited from establishment of control over Russian strategic companies, and their participation in strategic companies shall be controlled by the state in order to secure the state defense and the national security.

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18. Slovakia	
18.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>After the Velvet revolution and collapse of supremacy of the communist party, Slovakia was established in 1993 as a sovereign and independent state. At the beginning, there were almost no foreign investments. According to a report by the National Bank of Slovakia, the entry of foreign direct investment was very low until 1997. However, this began to change together with the accession to the European Union in 2004, and Slovakia has become a liberal and welcoming state for foreign investment.</p> <p>We can say that in the 1990s, compared to other transforming economies of Central and Eastern Europe - Hungary and the Czech Republic, Slovakia showed a lower share of foreign direct investment in GDP. The change did not occur until the first decade of the 21st century, when a sharp increase in the inflow investment can be observed (2001-2004) - above 50% of GDP. As a result, the Slovak Republic has entered the group of economies that have a higher share in foreign investment than the EU average.</p> <p>In general, the liberalization of markets and the privatization of strategic companies and entire industries have managed to attract a high inflow of foreign direct investment to Slovakia - especially in the automotive industry.</p> <p>Therefore, in the last decades, Slovakia has followed a liberal and welcoming approach (as evidenced by the arrival of several large investors – Volkswagen Slovakia, PSA Group – Peugeot Citroen, KIA Motors Slovakia, Jaguar and Land Rover Slovakia, Amazon).</p>
18.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	No, there has been no change in the welcoming approach described above.
18.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	Over the course of the years, Slovakia has adopted several legislative acts in the area of enabling, supporting and facilitating foreign investment. Slovakia has no laws which would restrict foreign investments (except for international sanctions' lists which Slovakia applies).
18.4	Outlook on the Future - short/medium term
18.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	No adverse interventions expected. On the other hand, now there are state aid measures supporting the maintenance of operations and employment of both domestic and foreign investors in Slovakia.
18.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	No such initiatives.
18.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>We are not in a position to assess this due to the COVID-19 related financial crisis and turbulent international affairs (e.g. Brexit, China-US relations).</p> <p>Now we can comment on Slovakia only. Foreign investments are crucial to Slovak economy. Therefore, the new government (in office since March 2020) remains positive and welcoming towards foreign investments. For example, it has committed to improve the conditions for foreign investments and doing business in Slovakia. Therefore, we believe Slovakia will remain attractive to foreign investors.</p>

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19. Spain	
19.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>The Spanish jurisdiction has historically been liberal and welcoming towards foreign investment, in an attempt to follow the EU regulations. Prior to the Covid-19 pandemic, foreign investments in Spain were liberalized pursuant to Law 19/2003, of 4 July, on the legal regime applicable to capital movements and economic transactions abroad and on certain measures to combat money laundering ("Law 19/2003") and RD 664/1999, of 23 April, on the foreign investment ("RD 664/1999"), and they were only subject to a mere obligation to report the investment for administrative and statistical purposes. The only exceptions to this liberalization of foreign investment were: (i) the investments in the national defence industry, which required prior authorization by the Spanish Cabinet; and (ii) the investments made by the non-EU foreign investments in gambling, telecommunications and air transport. Additionally, the Spanish foreign investment regime contemplates the possibility of suspending the general freedom of investment when dealing with sectors affecting the public order, public security or public health and, most specifically, the production and trade of weapons, ammunition, explosives and other war equipment (subject to prior administrative clearance). In this regard, Law 8/2011, of 28 April, on measures to protect critical infrastructures ("Law 8/2011") establishes, among others, the following strategic sectors for security purposes: space, nuclear, chemical, R&D, water, energy, health, information technology, transport, food and financial. Notwithstanding the general framework of liberalization, the Spanish Government retains the capacity to suspend freedom of foreign investment under certain circumstances (such as Covid-19 pandemic) and recent cases show a seeming willingness by the Spanish Government to exert control over certain strategic assets.</p>
19.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>The Spanish jurisdiction has historically been liberal and welcoming towards foreign investment, in an attempt to follow the EU regulations. Prior to the Covid-19 pandemic, foreign investments in Spain were liberalized pursuant to Law 19/2003, of 4 July, on the legal regime applicable to capital movements and economic transactions abroad and on certain measures to combat money laundering ("Law 19/2003") and RD 664/1999, of 23 April, on the foreign investment ("RD 664/1999"), and they were only subject to a mere obligation to report the investment for administrative and statistical purposes. The only exceptions to this liberalization of foreign investment were: (i) the investments in the national defence industry, which required prior authorization by the Spanish Cabinet; and (ii) the investments made by the non-EU foreign investments in gambling, telecommunications and air transport. Additionally, the Spanish foreign investment regime contemplates the possibility of suspending the general freedom of investment when dealing with sectors affecting the public order, public security or public health and, most specifically, the production and trade of weapons, ammunition, explosives and other war equipment (subject to prior administrative clearance). In this regard, Law 8/2011, of 28 April, on measures to protect critical infrastructures ("Law 8/2011") establishes, among others, the following strategic sectors for security purposes: space, nuclear, chemical, R&D, water, energy, health, information technology, transport, food and financial. Notwithstanding the general framework of liberalization, the Spanish Government retains the capacity to suspend freedom of foreign investment under certain circumstances (such as Covid-19 pandemic) and recent cases show a seeming willingness by the Spanish Government to exert control over certain strategic assets.</p>
19.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Taking into account the liberalization regime applying in Spain, when a foreign investment is in place, RD 664/1999 establishes two declaration regimes in order to report the transaction to the Investments Registry of the Ministry of Economy, Industry and Competitiveness:</p> <ul style="list-style-type: none"> (i) an <i>ex ante</i> declaration regime (which does not mean clearance) that applies only to: <ul style="list-style-type: none"> • investments made from a country or territory identified as a tax haven in Royal Decree 1080/1991 of 5 July. No <i>ex ante</i> declaration is required if the investment is made in listed shares or investment funds registered with the Spanish Securities Market Commission (CNMV) or involves less than 50 per cent of the Spanish company's share capital; or • investments made in Spain by non-EU Member States acquiring property to be used as diplomatic or consular offices, except under reciprocity rules; and (ii) an <i>ex post</i> declaration regime, which applies to all foreign investors, including those subject to an <i>ex ante</i> declaration, for administrative, statistical and economic purposes only. <p>As previously stated, the liberalized system can be suspended by the Spanish Government on an ad hoc basis in the event the purported investment affect, or may affect, public powers, public order, security or public health-related activities. Consequently, in the event a sector or activity is suspended, that investment would first require an administrative clearance.</p>
19.4	<p>Outlook on the Future - short/medium term</p>
19.4.1	<p>Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).</p>

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	<p>Yes. Since mid-March 2020, the Spanish Government has enacted several emergency regulations to tackle the social and economic impact of the Covid-19 outbreak. Of those measures, the modification and partial suspension of the framework of liberalization applicable to foreign investments in Spain is of particular importance. While the foreign investment regime was characterized as “generally liberal” until the Covid-19 pandemic (very few specific sectors were subject to prior foreign investment screening), Spain was the first country which substantially strengthened the regime due to the impact of the pandemic. One of these measures relates to extending the pre-closing approval requirement to many strategic sectors. Further, investor-related limitations were introduced, which apply irrespective of the sector affected by the transaction. At the end, an extra protection of Spanish companies in strategic sectors from foreign investments and from specifically restricted investors has taken place in Spain due to the Covid-19 pandemic (see below point 19.4.2 for further detail on the measures and regulation approved in this regard).</p>
19.4.2	<p>Are there already any law making initiatives in place in this respect? (if yes, please give a short description)</p> <p>The regulation currently applying to the foreign investment in Spain is the recent Royal Decree-law 8/2020, of 17 March, on extraordinary measures to tackle the economic and social impact of Covid-19 (“RDL 8/2020”), that modified Law 19/2003 by adding a new article 7 <i>bis</i> titled “<i>suspension of the framework for the liberalization of certain foreign direct investments in Spain</i>”, therefore suspending the general framework of liberalization for a broad variety of foreign direct investments. The RDL 8/2020 was further amended by the Royal Decree-Law 11/2020, of 31 March, on urgent complementary measures in the social and economic field to cope with Covid-19.</p> <p>One of the most remarkable measures approved by RDL 8/2020 is that certain foreign direct investments in Spain became subject to a prior authorization regime. This measure affects foreign direct investment in Spain by investors resident in countries outside the EU and the EFTA (composed of Norway, Iceland, Liechtenstein and Switzerland) where (i) as a result of the investment, the investor will gain ownership of 10% or more of the Spanish company’s share capital; or (ii) as a consequence of the corporate transaction, act or legal transaction, the investor will effectively participate in the management, or will take control of the company. Non-EU/EFTA Resident means both (i) residents in any country other than EU Member States or EFTA Member States (the rules are silent as to the specific treatment of the UK in the context of Brexit and there is no indication that the UK will be treated as an EU member state); or (ii) residents in EU Member States or EFTA Member States ultimately owned by residents outside the EU or EFTA, a category which includes any EU or EFTA companies in which residents of countries outside the EU or EFTA (a) directly or indirectly hold 25% or more of the shares or the voting rights, or (b) otherwise (i.e. by other means) exercise direct or indirect control (there is no indication as to whether this could be computed individually or in aggregate).</p> <p>Sectors affected by this regime are strategic sectors, including (i) critical infrastructures (e.g., energy, transport, water, healthcare, communications, media, data storage, defense, finance, etc.), (ii) critical technologies and dual-use items, (iii) fundamental supplies (including energy and supplies affecting raw materials or food safety), (iv) sectors with access to sensitive information (including personal data), affecting public order, healthcare or security, and (v) media. Other foreign investments in which liberalization is suspended, irrespective of whether the investment will take place in one strategic sector, are those made by specifically restricted investors, i.e. (i) investors controlled by a government of other countries, (ii) investors who have made investments or participated in businesses related to security, public order and public health in any other EU country, and/or (iii) investors in respect of which an administrative or judicial procedure based on criminal or illegal activities has been initiated in any EU Member State or in any other state in the world.</p> <p>Additionally, transactions under EUR 1m are exempt of this regime, and transactions between EUR 1m and EUR 5m and those that already existed on March 18, 2020 (signed or with a binding offer setting a price) will benefit from a simplified authorization process.</p> <p>On the other hand, it is important to mention the draft Royal Decree (the “Draft Royal Decree”) on foreign investments, which has been recently authorized by the Spanish Government and might be soon in force. The reason of the Draft Royal Decree is the necessity to adapt to new EU regulations imposing further measures to tackle foreign investments affecting the security and public order of the Member States. This Draft Royal Decree, once in force, would replace the regime established by RDL 8/2020. Although it should be borne in mind that the Draft Royal Decree was drafted before the current health emergency and, therefore, it is very likely that it will be modified prior to its final approval, the main rules affecting foreign direct investments are:</p> <ul style="list-style-type: none"> (i) The foreign investments of non-EU Member States in activities directly related to national defense, weapons and explosives for civil use and the acquisition of real estate for diplomatic use are subject to authorization (except, in the case of acquisition of real estate, if a reciprocity arrangement is in place between both countries that allows the exemption). (ii) Selective supervision of current or past investments made by investors that are not EU or EFTA residents. This does not mean that an authorization is required; it means that the Spanish Government might require an investor to report an investment and to provide an explanatory report when it understands that the investment entails a potential risk to security and public order. After an analysis, if it effectively entails a potential risk, the Spanish Government might suspend liberalization for that transaction and require the authorization. <p>In relation to the foregoing, it is understood that the acquisition of a Spanish company entails a risk to security and public order when it performs the following business activities: (i) the operation of critical infrastructure, (ii) the development, modification, control and operation of networks or information systems used to provide essential services and digital services, (iii) the production, commercialization or distribution of dual use material, items or technologies, (iv) private security, (v) gambling, and (vi) activities connected to terrorist financing.</p>

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	Furthermore, the Draft Royal Decree establishes that, (i) if an interposed entity is used to perform a transaction merely for structural reasons, the person or entity whose residence renders the investment a foreign investment will be the entity that has effective control over the company, investment fund or real estate, and (ii) investments that have not obtained the required authorization or that have failed to fulfil the conditions imposed constitute a very serious offence.
19.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>The uncertainty caused by Covid-19 pandemic will undoubtedly have a negative impact in the Spanish economy, which Spain is already experiencing. Foreign investments (mainly from non-EU players) seem to be decreasing and will decrease in the short and medium term in order to protect Spanish companies. Spain, through the measures adopted by its Government, seems to turn into a more protectionist jurisdiction moving from the liberalization regime that has historically been in force.</p> <p>The RDL 8/2020, that imposes provisional measures to tackle the threat of the Covid-19 pandemic, will likely be lifted once the pandemic threat is over, and, therefore, the Draft Royal Decree (once passed) will prevail. The Draft Royal Decree provides for a framework for screening foreign direct investments less liberal than the previous regime in relation to non-EU investments and, therefore, regulates the suspension of the liberalization of investments affecting the exercise of public authority, or on the grounds of public order, public security or public health. Although the Draft Royal Decree is expected to be passed shortly, we will have to see what is finally approved, as the final text might differ from the current draft due to the health emergency</p>

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20. Sweden	
20.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Over the last decades, Sweden has followed a predominantly liberal approach to foreign direct investments with political and economic openness. According to the Swedish constitution, the right to freedom of trade (Sw. <i>Näringsfrihet</i>) may only be limited to protect certain public interests and never solely for the purpose to financially benefit certain persons/companies. There is currently no Swedish legislation in place which in general restricts foreign direct investments and/or provides for a general screening mechanism of foreign purchasers/investors. Further, in 2018 and 2019 two Swedish Government Official Reports, SOU 2018:56 Better communication for more investments (Sw. <i>Bättre kommunikation för fler investeringar</i>) and SOU 2019:21 Effective promotion of investments for Sweden (Sw. <i>Effektivt investeringsfrämjande för hela Sverige</i>) were issued on how Sweden could further promote foreign direct investments. Foreign direct investments, pre-dominantly from other European countries, are of great importance for the Kingdom of Sweden, creating approximately 680,000 job opportunities which is a significant number for a country with a total population of just over 10 million inhabitants.</p>
20.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>The most recent law which in general restricted foreign investments was the 1982 Act on foreign acquisitions of Swedish entities ("FAA") (Sw. <i>lag (1982:617) om utländska förvärv av svenska företag m.m.</i>) was repealed in 1992. Under the FAA, transactions of foreign purchasers/investors which exceeded certain thresholds were subject to approval by the relevant authority and could be declared null and void. The FAA included a material public interest (Sw. <i>väsentligt allmänintresse</i>) test but was repealed to stimulate the number and size of the foreign investments in Sweden and to prepare Swedish law for Sweden's upcoming membership in the EU.</p> <p>One Swedish legal act which can affect foreign direct investments in Swedish entities is the Protective Security Act (Sw. <i>Säkerhetslagen</i>). In 2019, the existing Act Protective Security Act (1996:627) was replaced with the new Protective Security Act (2018:585) ("New PSA"). However, neither the New PSA nor the Protective Security Ordinance (2018:658) (Sw. <i>Säkerhetsskyddsförordningen</i>) ("PSO") include a foreign direct investment screening mechanism. Instead the relevant rules aim to protect security-sensitive information of essential interest to Sweden's security. Business operators have to ensure a higher level of confidentiality and implementation of more detailed security analyses. Based on the result of such security analysis, certain actions have to be taken by the business operator. The New PSA places the obligations on the business operator and such obligations are not linked to a change of ownership. It should be noted that the PSO includes a provision requiring the transferor (Sw. <i>överlåtaren</i>) of a security sensitive business (Sw. <i>säkerhetskänslig verksamhet</i>) to report the transfer to the relevant authority prior to the transfer being initiated. As per today, neither the New PSA nor the PSO include specific sanctions to enforce non-compliance of the relevant provisions.</p>
20.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p><i>General:</i> Currently, no general prohibition against /approval procedure regarding foreign direct investments in Sweden apply.</p> <p><i>Special legislation, limited scope:</i> Aside from laws governing approval procedures in relation to merger approval (by the Swedish Competition Authority) and ownership assessments approvals (by the Swedish Financial Supervisory Authority) in relation to certain acquisitions in entities in the financial sector – not specifically linked to the nationality of the investor - Sweden has adopted certain special regulations which can affect the possibility to make foreign direct investments. An example is the Act on war material (1992:1300) (Sw. <i>Lag om krigsmaterial</i>). Approval for manufacturing and supplying war equipment (Sw. <i>krigsmaterial</i>) may be conditioned upon that only a certain portion of the shares in the Swedish entity may be, directly or indirectly, owned by a foreign natural or legal person. Another example relates to the granting of licenses for 5G (formally, the <i>assignment of 3.5 and 2.3 Ghz bands</i>). According to guidelines issued by the supervisory authority, the relevant authority can consider, for example, the applicants relations (including as reflected in the owning structure) to third party countries (non-EU-countries) and such third-party country's legislation (for example if democratic principles are not applied) when assessing if licenses should be granted. Thus, transfers of business relating to 5G licenses can already be a subject to restrictions relating to the domicile of the transferee/acquirer.</p>
20.4	<p>Outlook on the Future - short/medium term</p>
20.4.1	<p>Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).</p> <p>Lately and especially in connection with EU's adoption of the EU FDI Screening Regulation (the "Screening Regulation"), discussions in media and between politicians have highlighted the fact that Sweden lacks a screening mechanism in relation to foreign direct investments. In addition, certain authorities have pointed out that there may be a security risk connected with certain foreign direct investments in Sweden. Further, certain authorities and politicians have discussed that this risk has increased due to the Covid 19-crisis and that measures should be taken to mitigate the risk. Pursuantly, the Covid-19 crisis appears to have affected the politicians and may have resulted in that the law-making process may be accelerated and/or interim legislation should be adopted (see 20.4.2).</p>

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	<p>The Screening Regulation was adopted in 2019 and will have direct effect in Sweden. The Screening Regulation does not impose an obligation on member states without a screening mechanism to introduce such mechanism in relation to foreign direct investments (i.e. investments from third countries). However, the Screening Regulation includes certain undertakings for member states to establish a contact point (Sw. <i>kontaktpunkt</i>) and to, upon request, provide information to other member states in relation to foreign direct investments. The Swedish legal system still needs to be updated in order to be compliant with the Screening Regulation.</p> <p>In the light of the above it can be expected that Swedish legislation relating to foreign direct investments will be amended within the foreseeable future.</p>
20.4.2	<p>Are there already any law making initiatives in place in this respect? (if yes, please give a short description)</p>
	<p>Currently, several propositions for new laws relating to foreign direct investments in Sweden are being processed and reviewed, although none has yet been formally proposed to nor adopted by the parliament.</p> <p><u>SOU 2020:11 <i>Additional provisions to the EU regulation on foreign direct investments</i> ("SOU 2020:11")</u></p> <p>SOU 2020:11 is a Swedish Government Official Report investigating and proposing certain amendments in order for Sweden to become compliant with the Screening Regulation. SOU 2020:11 proposes a new law in order to establish a system with a contact point and authorising the contact point to perform the measures and actions of a contact point, as required by the Screening Regulation. The assignment of the contact point is set out in the Screening Regulation and consists of, in short, being a contact point for information exchange. SOU 2020:11 is not expected in itself to result in an establishment of a foreign direct investments screening mechanism, but (as currently drafted) aims to establish the relevant infrastructure in relation thereto.</p> <p><u>SOU 2018:82 <i>Additions to the new protective security act</i> ("SOU 2018:82")</u></p> <p>SOU 2018:82 is a Swedish Government Official Report proposing amendments to the New PSA and the PSO. One of the material changes includes a mechanism allowing the supervisory authority (same authority as the authority proposed to constitute the contact point) to prohibit a transfer of a security sensitive business. The proposed mechanism includes a two steps process in relation to all transfers of security sensitive operations and all transfers relating to property which has meaning for Sweden's safety:</p> <p>Step 1 – an obligation for a seller or a business operator to perform a security assessment and suitability assessment prior to a transfer is initiated. If the transfer is deemed unsuitable from a security perspective the transfer may not be initiated.</p> <p>Step 2 - If the suitability assessment in Step 1 results in that the transaction is deemed suitable, the transferor shall liaise (Sw. <i>samråda</i>) with the supervisory authority. The supervisory authority may, among other things, approve the transfer provided that certain conditions are met or, ultimately, if not suitable from a security perspective and in the light of the principle of proportionality, prohibit the transfer.</p> <p>If the steps are not followed the transaction may be deemed null and void.</p> <p>SOU 2018:82 was sent for referral in the beginning of 2019 and answers were provided during spring 2019. SOU 2018:82 has not yet resulted in a bill to be presented to the parliament.</p> <p><u>Interim legislation</u></p> <p>During April 2020 discussions in the Parliamentary Standing Committee on Foreign Affairs (Sw. <i>Utrikesutskottet</i>) have concerned the need to promptly have legislation which makes it possible to stop foreign direct investments which may be a threat to the safety of the Kingdom of Sweden. One proposal has been to amend the law (2000:1064) on control of dual-use products and technical support (Sw. <i>lag (2000:1064) om kontroll av produkter med dubbla användningsområden och av tekniskt bistånd</i>) to also include provisions in relation to foreign direct investments, meanwhile SOU 2018:82 is still being processed within the law-making procedures. The details of the proposal for interim legislation has not been made available for the public yet nor presented for voting in the parliament.</p>
20.5	<p>Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.</p>
	<p>In the long-term we expect that Sweden will continue taking a rather liberal approach to foreign investments. However, in the short term there is a great deal of uncertainty in this area the implementation of the minimum requirements under the Screening Regulation will mean that the discussions around screening of foreign investments will continue. Swedish rules will need to take into account the required information disclosures to other EU countries and the EU. Other countries such as Germany, Italy and France with tighter investment controls to protect operations of national security concern will put additional pressure on the Swedish government to introduce similar rules to achieve a level playing field within the EU. We also expect certain sectors such as energy, transport and healthcare to be in the focus of new regulations on safety and public order.</p>

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21. Switzerland	
21.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>In contrast to most jurisdictions, Switzerland does not provide for general foreign direct investment controls. Hence, there are no Swiss laws that generally prohibit or require specific approval/reporting for foreign direct investments.</p> <p>There are, however, some restrictions for specific sectors such as the financial industry and for companies holding residential property in Switzerland. Further, with respect to certain companies which are tasked with the fulfilment of certain critical state tasks (e.g. energy supply, defence, communication/information, infrastructure [public transport, mail], etc.) and which require state licenses, the granting of a state license to a foreign investor may depend on reciprocity, i.e. whether reciprocal rights are granted in the country of the respective investor.</p> <p>In a nutshell, the historical and current Swiss legal framework for foreign direct investments was and still is fairly liberal, with – in most cases – no general licensing or approval requirement for foreign investments.</p>
21.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>In recent years, foreign direct investments in Switzerland have increased, which has led to a public debate as to whether this may result in a loss of jobs and expertise and, hence, represents e.g. a threat to national security and independence.</p> <p>Nevertheless, in February 2019, in its report on cross-border investments and investment controls, the Swiss Federal Council has reiterated Switzerland's liberal approach. According to the Swiss Federal Council, the current legislation allows the authorities to effectively mitigate potential risks and the introduction of investment controls would currently bring no additional benefits for Switzerland. Rather the opposite; restricting foreign direct investments would mean additional red tape for the companies involved and greater uncertainty for investors, and would thus weaken the attractiveness of Switzerland as a business hub. Having said that, the Swiss Federal Council stated that it is well aware of the possible risks associated with foreign direct investments and, therefore, intends to conduct a monitoring exercise and review the report within the next four years.</p> <p>Notwithstanding this report, on 3 March 2020 the Swiss Parliament tasked the Swiss Government with proposing a draft bill for the introduction of foreign investment controls within the next two years and, <i>inter alia</i>, the setup of a respective licensing authority (see question 21.4 for further information).</p>
21.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>As mentioned in question 21.1, there are no generally applicable Swiss laws that prohibit, restrict or require approval of foreign investments. In Switzerland, the majority of companies that provide critical infrastructure and services for the Swiss population are at least partly state owned, such as for example Swiss Federal Railways, Swiss Telecom, Swiss Armament and Swiss Mail. Since only the legislator itself is in a position to create the basis for the sale of such companies to a foreign investor, state ownership is thus the strongest form of foreign investment control. Therefore, for example with regard to a threat to national security from the sale of critical infrastructure, in principle, there is currently no such need to introduce foreign investment controls in Switzerland.</p> <p>This, however, does not mean that direct investments by foreign investors in Swiss companies that do not qualify as critical infrastructure are possible without restrictions. Foreign investments in companies engaged in certain regulated industries and sectors in Switzerland may require governmental permission or approval. Below you find some further information on the two most important examples, i.e. (i) banking sector and (ii) real estate.</p> <p>(i) Banking sector</p> <p>There are provisions in the financial market laws that are specifically aiming at foreign investors intending to hold participations in banks incorporated in Switzerland. In particular, the transfer of a controlling stake in a Swiss bank or securities house to a foreign shareholder (or from one foreign shareholder to another) requires not just a notification to, but a so called "additional licence" from, the Swiss Financial Market Supervisory Authority (FINMA). Whether an investor is a foreign one is not only considered looking at the place of incorporation of holding vehicles or OpCos in the holding chain, but also taking into consideration the domicile of the ultimate beneficial owner in a structure. In addition, a new "additional licence" is required if foreigners holding qualified participations in a foreign-controlled institution change. The "additional licence" is subject to certain conditions, in particular reciprocity requirements and in case of financial groups adequate group supervision being exercised by the group's home country regulator. Reciprocity basically means that a Swiss resident or Swiss domiciled entity is permitted to acquire a controlling participation in a bank or securities dealer in the country of the holder of the participation. This reciprocity requirement, however, does not apply to member states of the World Trade Organization (WTO) or where it would contravene other obligations under international law.</p> <p>(ii) Real Estate</p>

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	<p>The acquisition of real estate in Switzerland by foreign investors or foreign-controlled companies is subject to the Federal Act on the Acquisition of Real Estate by Foreign Persons (so called <i>Lex Koller</i>). <i>Lex Koller</i> restricts the acquisition of real estate in particular residential property by foreign (non-Swiss) persons (subject to certain exceptions). <i>Lex Koller</i> not only applies to direct but also to indirect acquisitions by way of acquiring shares of a real estate company. The purpose of <i>Lex Koller</i> is to prevent the acquisition of residential real estate by foreign or foreign-controlled companies. The acquisition of real estate used for commercial purposes (e.g., offices, shopping centres, retail, hotels restaurant) by foreign investors is not limited unless the commercially used property includes areas that are used for residential purposes or consist of more than one third of undeveloped land (land reserves). Acquiring real estate, which is subject to <i>Lex Koller</i> requires approval from the competent authorities.</p> <p>Other sectors that also provide for license or approval requirements are:</p> <ul style="list-style-type: none"> • Telecommunication • Nuclear power plants • Radio and television • Aviation
21.4	Outlook on the Future - short/medium term
21.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>In light of the fact that there is no generally applicable Swiss law on foreign investment controls but that the Swiss Parliament has tasked the Swiss Government with proposing a draft bill for the introduction of investment controls, it is to be expected that in the next years investment controls may be introduced to a certain extent. It can be assumed, that in accordance with the principle of proportionality the Swiss Federal Council may provide for a threshold for reporting/approval requirements and limit such obligations to certain sectors/industries. The historical liberal approach will, however, most likely be upheld.</p>
21.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>As mentioned in question 21.1 and 21.4.1, on 3 March 2020 the Swiss Parliament has tasked the Swiss Federal Council with proposing a draft bill for the introduction of investment controls. The Swiss Federal Council has now to submit such a draft bill to the Swiss Parliament within two years. Once the draft bill is submitted to the Swiss Parliament, both chambers of the Swiss Parliament will have to debate it. In addition, the draft bill may be subject to a referendum (public vote). This legislative process will take several years and it has yet to be seen what the outcome will be.</p>
21.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>Given the fact that as of now, there is no generally applicable Swiss law on foreign investment controls and the Swiss Federal Council is preparing the draft bill on foreign investment controls, there will some amendments to the Swiss Federal Council's liberal approach towards foreign investments. However, until the foreign investment control law will be implemented in a few years' time, Switzerland will, hopefully, uphold its liberal approach towards foreign investments.</p>

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22. The Netherlands	
22.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	Historically, the Dutch approach towards foreign investments can be seen as liberal and welcoming. The Netherlands offers an attractive business and investment climate for foreign businesses, and is one of the largest recipients of foreign direct investments (FDI) in the world. This can be attributed to the Netherlands' business friendly tax-climate, highly educated and multilingual workforce, superior infrastructure, competitive economy and a large number of investment treaties containing investor protections.
22.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	The liberal and welcoming approach of the Dutch government has not significantly changed over the past few years. Moreover, providing an environment attractive to foreign investors is a high priority of the Dutch government. The Dutch government therefore actively engages in recruiting foreign investors, for instance by providing public information and institutional assistance to prospective investors through the Netherlands Foreign Investment Agency (NFIA). However, it seems that the Dutch government intends to introduce a slightly more protectionist approach in the near future in certain specific industries. In our view, this is the result of a general shift towards more populist politics and further supported by EU legislation (EU Regulation 2019/452/EU).
22.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	The Dutch jurisdiction does not contain any regulatory restrictions on foreign direct investments into the Netherlands. It, however, has certain limitations on foreign investment and ownership in sectors that are of vital national interest, such as, energy (electricity and gas, the only two sectors notified to the Commission pursuant to Article 3.8 of Regulation (EU) 2019/452) and defense and security. However, prior to Covid-19 pandemic, some additional initiatives were already underway (see section 22.4.2 below).
22.4	Outlook on the Future - short/medium term
22.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>It is expected that the Dutch government will slightly increase state intervention in some foreign investment cases in the future. Several law making initiatives concerning this matter are in place, which indicate that the Dutch government is leaning towards more protectionism. For instance, a bill with respect to the unwanted control over telecommunications is currently subject to approval from the Senate.</p> <p>Furthermore, in November 2019, the Dutch government presented a plan to introduce an act in which a broader national security screening that is relevant from a national security perspective will be introduced. This legislation is independent from the EU Regulation 2019/452 (see section 22.4.2 below). Specifically, this concerns legislation that imposes an obligation to report investments in or acquisitions of companies that fall within the scope of the investment screening before the investment or acquisition takes place. A risk analysis is then carried out to determine whether there is a risk to national safety and security and what possibilities exist to eliminate these risks by means of existing legislation and regulations. In extreme cases, the investment can be prohibited. Further details of this draft act have not yet been made public. Despite the fact that the Dutch government specifically stated that the impact of the presented plan on the Dutch investment climate should be kept to a minimum, it indicates that the Dutch government is working on implementing an increase on the state intervention in the future. None of the mentioned measures, however, are related to or increased or accelerated in connection with the Covid-19 pandemic.</p>
22.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>Unwanted control over telecommunications Act</p> <p>On 8 May 2020 a draft bill introducing a public interest review mechanism for the telecommunications sector has been passed by the Dutch Parliament. It is now subject to approval from the Senate. Under this proposal, the minister of Economic Affairs and Climate is given the power to prohibit an acquisition or retention of a controlling interest in a telecommunications party if, in his opinion, the acquisition or retention of that control would lead to a threat to the public interest.</p> <p>Anyone who intends to acquire a controlling interest in a telecommunications party must report this intention to the Minister of Economic Affairs and Climate if this control leads to relevant influence in the telecommunications sector. Upon receipt of a notification of a proposed acquisition of controlling interest, the Minister will start an investigation. The purpose of this investigation is to determine whether there are grounds for a prohibition. In addition, the Minister of Economic Affairs will actively monitor control relationships in the telecommunications sector.</p> <p>EU Regulation 2019/452</p>

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	<p>As of 11 April 2019, an EU Regulation providing a new framework for screening of foreign direct investments into the European Union and its Member States (Regulation 2019/452) entered into force and will apply as of 11 October 2020. The Regulation entails various obligations for Member States. For example, Member States must share available information on FDI's at the request of another Member State if the investment affects the public order and security of that Member State. To this end, the Regulation requires the establishment of a contact point for the collection, aggregation and exchange of confidential information between the Member States and with the European Commission. The obligations laid down in the Regulation cannot be implemented based on the existing Dutch legal provisions. That is why an implementing act is being prepared to enable the Netherlands to comply with these obligations.</p> <p>In addition, the Regulation provides a framework for screening of FDI by Member States on grounds of security or public order. Under the Regulation Member States will be allowed to implement an FDI screening mechanism subject to certain formal requirements. It is noted that the Regulation does not require Member States to have an FDI screening mechanism.</p> <p>Broader national security screening</p> <p>The Dutch government presented a plan to introduce an act in which a broader national security screening that is relevant from a national security perspective will be introduced (see section 22.4.1 above). As mentioned above, this plan does not result from the EU Regulation 2019/415.</p> <p>Covid-19</p> <p>With regard to the Covid-19 outbreak, the Dutch government has implemented several short-term measures to mitigate the impact of the Covid-19 virus on the Dutch economy. However, these measures do not directly concern a direct increase or decrease of state intervention with regard to foreign investments.</p>
22.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>Given the current geopolitical and economic climate we expect that the liberal global investment will be more restricted in the future. However, the Netherlands remains an international and open society, and the Dutch approach to foreign investments has always been welcoming, and therefore will probably not swift entirely to a protectionist approach. However, it is possible that the Dutch government will implement stricter measures on foreign investment to protect the Dutch economy in the future.</p>

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23. Turkey	
23.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	Turkey has generally been liberal and welcoming towards foreign investment. It has even become more liberal during the last twenty years where a number of new schemes and incentives were introduced in order to encourage new foreign investment.
23.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	There has not been a recent major change in the historical position of Turkey.
23.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>There is no specific legislation allowing state intervention for foreign investments in Turkey. There is general legislation which allows nationalisation or expropriation of private assets for reasons such as public benefit and national security, however, such legislation applies to all private assets located in Turkey and is not directly aimed at foreign investments.</p> <p>Some projects such as public private partnership projects and some privatisations may have certain restrictions with respect to foreign ownership (such as those in the telecommunications, health, defence, and media sectors) but these are determined on a project to project basis rather than constitute a general restriction.</p> <p>On the contrary, Turkey, during the last couple of decades, introduced various schemes and programmes aimed to encourage and support foreign investments ranging from various tax and customs exemptions to employment and social security support, loan and interest support and land allocation. In addition, many major state projects (especially in the transportation, infrastructure and health sectors) have benefited from government support for foreign investors mostly in the form of treasury guarantees and state revenue guarantees.</p>
23.4	Outlook on the Future - short/medium term
23.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	The Turkish government has introduced various measures to support businesses and minimise the effect of the pandemic on the economy. However, none of these measures can be seen to be a restriction to the current foreign investment. In addition, they apply equally to all entities and assets located in Turkey. One measure which may currently be causing some issues for foreign investors is the restriction of dividend distribution for the 2019 fiscal year. As a result of such restriction, Turkish companies must postpone and are prohibited from making cash dividend distributions exceeding 25% of the net profit pertaining to the 2019 fiscal year until at least 30 September 2020 (unless extended). This is, however, a temporary measure aiming to protect liquidity in the economy rather than a state intervention on businesses and investments. Also, as with the previous measures they apply to all companies located in Turkey, rather than only to companies with foreign ownership.
23.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	There are no law making initiatives in this respect at this stage.
23.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
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24. United Kingdom	
24.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Historically, the UK has had a liberal approach to foreign investment and advocated for politically independent merger policy, although there have been moves towards a more interventionist approach in recent years (see question 24.2).</p> <p>At present, the UK does not have a specific foreign investment screening regime. The UK Government can, however, intervene in transactions that fall for review under the UK or EU merger control regimes on the basis of three narrow public interest grounds, which are national security, stability of the UK financial system, and media plurality, quality and standards. The Government can also issue an order to modify this list of public interest grounds, allowing it to intervene in any other case deemed to be of public interest – it brought in the ground of stability of the UK financial system, for example, to allow it to intervene in a merger in the banking sector (the Lloyds acquisition of HBOS) in the 2008 financial crisis.</p> <p>Under the current rules there is no prior notification system. It is open to the Government to intervene in the transaction up to four months after completion (in parallel with the deadlines under the UK merger regime), which can create legal uncertainty. However, there have only been around 20 public interest interventions since the Government's powers were introduced in 2002. By comparison, the UK's Competition and Markets Authority carries out an average of 60 reviews a year under the UK merger regime.</p>
24.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>Over the last few years there has been an increasing shift in stance towards a more interventionist approach in the UK, with a focus on: (i) preserving critical UK businesses and protecting jobs; and (ii) responding to national security concerns.</p> <p>(i) Preserving critical UK businesses</p> <p>In 2014, following some high profile cases in which the Government was criticised for failing to protect UK businesses from perceived 'predatory' foreign takeovers (in particular, Kraft's 2010 acquisition of Cadbury, and Pfizer's attempted acquisition of AstraZeneca in 2014), the UK reformed its regime for takeovers of publicly traded companies so that certain pre-takeover statements by bidders (relating, for example, to maintaining jobs or headquarters in the UK) were made binding.</p> <p>From mid-2016 there has also been a clear shift towards increasing interventionism, which became evident when Theresa May, in launching her (ultimately successful) campaign for leadership of the Conservative party, advocated a more political approach to foreign investment, saying with reference to the Pfizer / AstraZeneca attempted takeover that <i>"A proper industrial strategy wouldn't automatically stop the sale of British firms to foreign ones, but it should be capable of stepping in to defend a sector that is as important as pharmaceuticals is to Britain"</i>.</p> <p>After that date, a number of mergers were subject to close scrutiny by the UK Government: for example, the takeover of Arm by SoftBank in September 2016 was subject to a commitment by SoftBank under the takeover regime to maintain Arm's UK headquarters and maintain jobs in the UK. The hostile takeover of GKN by Melrose in 2018 also resulted in commitments under the takeover regime, including commitments to maintain a UK workforce and headquarters in the UK, to continue to pay tax in the UK, and to give the UK Government early visibility of future buyers of the business.</p> <p>(ii) National security concerns</p> <p>Recent years have also seen increased intervention to address national security concerns.</p> <p>In September 2016, the Government delayed giving final approval to the construction of a new nuclear power station at EDF Hinkley Point C to examine whether Chinese investment in the project raised a national security issue. The investment was ultimately cleared after agreeing with EDF that the Government would be able to stop the sale of EDF's controlling stake, and would retain its ability to intervene in a sale after completion. The Government also announced that it would take a special share in all future nuclear projects to prevent significant stakes being sold without the Government's consent.</p> <p>In June 2018, the UK Government introduced lower merger control thresholds for transactions in three specific sectors (quantum technology, computer processing units and military or dual-use goods). The Government's powers to intervene in mergers on public interest grounds only apply where the merger is subject to the UK or EU merger control regimes, so these lower thresholds were intended to facilitate intervention on national security grounds in these sectors.</p> <p>The following month, the UK Government published a public consultation on a proposed new regime to review transactions on national security grounds. The consultation described the new regime as being aimed at investments from potentially hostile foreign states and that foreign acquirers are more likely to pose a national security risk than UK-based acquirers, but the proposed regime is not limited to foreign investments. According to the Government, such reforms are required to respond to technological, economic and geopolitical changes. The consultation pointed to other regimes around the world, such as the United States, which had similarly been looking to modernise their investment screening regimes. For more details on the</p>

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	proposed new regime, see question 24.4.
24.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	No, the UK does not have a specific foreign investment screening regime. However, as explained in question 24.1, the UK Government can intervene in transactions on specific public interest grounds, including national security, and there is a mechanism under the public takeover regime for the Government to require commitments from bidders relating to their conduct post-takeover.
24.4	Outlook on the Future - short/medium term
24.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>Yes. In July 2018, the UK Government consulted on a new regime to review transactions on national security grounds, which will be enacted by new legislation – see 24.4.2 below. The Government expects 200 national security notifications to be made each year under the proposed regime and considers that around 100 of these may be subject to a full assessment, with around 50 of these 100 requiring remedies. In comparison, at the time of writing, there have been just 12 public interest interventions on national security grounds since the existing powers were introduced in 2002. The new regime would therefore appear to involve a significant increase in the level of government intervention in comparison to current levels.</p> <p>The Government's initiative pre-dates COVID-19. At the time of writing, there is no indication that the impact of COVID-19 will cause the UK Government to accelerate the introduction of the new regime. There have also not yet been any public interest interventions on COVID-19 grounds.</p> <p>Amid increased scrutiny over China's investment in foreign assets, the UK Parliament's Foreign Affairs Committee announced in April that it would examine how the UK's Foreign and Commonwealth Office (FCO) — the Government department that promotes the country's interests abroad — assesses whether a potentially hostile party is seeking significant influence or control over a UK company, and what safeguards are required in the forthcoming national security screening regime to ensure that the FCO has a full role in the decision-making process in relation to interventions (responsibility for which is expected to lie formally with the Department for Business, Energy and Industrial Strategy). The Committee will also review the circumstances under which the FCO can intervene or stop transactions where there may be national security risks.</p>
24.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>Yes. In July 2018 the UK Government published a public consultation on a proposed new regime to review transactions on national security grounds, and in December 2019 the Government set out an outline of the proposed new National Security and Investment Bill. At the time of writing the new legislation has not yet been introduced in Parliament.</p> <p>The proposed regime would catch a wide range of transactions (wider than under most merger control regimes), including loans (e.g. where they are granted by potentially hostile lenders and/or on the basis of collateral over sensitive entities or assets), acquisitions of land (e.g. where that land is in close proximity to critical national infrastructure or government facilities), and acquisitions of intellectual property (e.g. where that IP is necessary for the supply of crucial services to national infrastructure), as well as acquisitions of shares and assets. It would apply to all sizes of transactions, in all sectors, and would include criminal as well as civil sanctions for breaches of the rules.</p> <p>Under the proposed regime, there would be a prior notification system allowing businesses to flag transactions raising potential security concerns for Government approval. The 2018 consultation anticipated there being 200 notifications a year under the proposed system with half of those likely to be called in by the Government. This indicates that we are likely to see a significant rise in the number of Government interventions compared to current levels. The outline for the proposed Bill did not specify whether notification would be voluntary or mandatory, though introducing a voluntary notification system with powers to 'call in' relevant transactions for review was the Government's preferred approach when proposals were last consulted on in 2018. In any event, the proposed regime may provide greater certainty for businesses, particularly when compared to current rules, which do not provide for a prior notification system.</p> <p>If and when the new regime is introduced, the pre-existing public interest intervention regime would also remain in force, but national security would fall away as a ground for intervention (leaving financial stability and media plurality as the remaining grounds).</p>
24.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>In recent years there has been a trend towards tightening foreign investment controls in the UK.</p> <p>The level of screening is likely to increase further once the new National Security and Investment Bill has been introduced, as explained in question 24.4. However, the UK's impending departure from the European Union will require the Government to nuance its messaging as it seeks to attract new foreign investment. Indeed, the 2018 public consultation on the proposed regime stressed that the UK remains open to foreign investment and will continue to strive to increase overseas investment from across the world. The COVID-19 pandemic adds an extra layer to this tension. In the short term, the Government will want to protect strategic and critical industries, such as healthcare, from foreign takeover to ensure the UK is able to provide for</p>

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	<p>is citizens. The longer term economic impact of the pandemic may, however, encourage the UK Government to shift towards a more liberal approach in order to stimulate the economy. Nevertheless, despite COVID-19 and the UK's imminent departure from the EU, the UK has remained committed to tackling the national security concerns raised by potentially hostile investors. In particular, the Government has continued to take steps to protect strategic assets. The Foreign Affairs Committee inquiry, discussed in question 24.4.1, recently questioned executives from Imagination Technologies — which is headquartered in the UK but ultimately owned by a Chinese state-backed fund — on the risk posed to the UK's digital infrastructure by the transfer of sensitive technology patents to China. The continued focus on national security concerns perhaps indicates that the shift towards increasing interventionism will remain in the long run.</p>
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AMERICAS Contributions by



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CREEL GARCÍA-CUÉLLAR
AIZA Y ENRÍQUEZ

WLRK
WACHTELL, LIPTON, ROSEN & KATZ

FERRERE

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25. Argentina	
25.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	Since the return of democracy in 1983, Argentina has been liberal and welcoming foreign investment. Foreign investors are welcomed to invest in Argentina. Because of the economic crisis, some provisional restrictions have been implemented by the government to safeguard the Argentine Central Bank's reserves.
25.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	Because of the economic crisis Argentina has established some exchange controls to protect the Argentine Central Bank's reserves. Additionally, there are some restrictions to the importation of goods, mainly on those branches of the industry where there is local production. The Government administers the imports through a licensing regime. Currently, some procedures have been implemented by the Argentine Central Bank in order to authorize remittance of funds abroad. (i.e. request Argentine Central Bank authorization before paying dividends abroad).
25.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	As mentioned before, there is state intervention when payments must be made abroad. Additionally, investors must bear in mind that since the quotation of US dollar is controlled artificially by the government, capitalization of companies must be analysed carefully to avoid losing value. Additionally, there are restrictions to purchase land by foreign investors, especially when the transactions involved rural land and/or if such land is near the borders. There are some restrictions to the importation of goods, mainly on those branches of the industry where there is local production. The Government administers the imports through a licensing regime.
25.4	Outlook on the Future - short/medium term
25.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	Argentina is facing not only the COVID-19 threat but also the negotiation of the external debt with the creditors in order to avoid a default. Bearing this in mind, we assume that (i) government will maintain the foreign exchange control to protect the Argentine Central Bank reserves and the threat of inflation; (ii) maintain some restrictions to the importation of goods produced locally; and (iii) some control upon the purchase of rural lands by foreigners and (iv) the remittance of foreign currency abroad will continue to be controlled in the near future.
25.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	The Government is implementing new initiatives to facilitate investments in energy, oil & gas, infrastructure and other critical areas.
25.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	Our concern is that, at the beginning, governments must take steps to protect their own industry and workers. We assume that restrictions to globalization will be implemented in other countries, as an initial protection measure. Nevertheless, globalization will gain force as soon as people realize that commercial interchange is essential for the progress of economies.

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26. Brazil	
26.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>There has been some variation historically in Brazil between a more liberal and welcoming approach towards foreign investment and the adoption of rather protectionist measures. Such dynamic was connected to the different economic approaches of the political parties that have been elected to federal administration in Brazil in the recent decades. It is fair to say that the liberal approach has been predominant at least in the last 4 years.</p> <p>In comparison with other jurisdictions, and not taking into account the most recent years, Brazil has been considered more protectionist than not over the past decades. However, that has not prevented foreign investment, mainly due to a combination of attractive characteristics, such as abundant natural resources, a large domestic market, a growing middle class, strategic geographical location and a diversified economy.</p> <p>In fact, Brazil has received inflows of foreign investment consistently throughout its recent history, ranking at least amongst the 7 largest recipients of foreign direct investment in the latest years.</p> <p>Foreign investment is not subject to government approvals or authorizations, and there are no requirements regarding minimum investment or local participation in capital, except in certain cases such as financial institutions and insurance companies. Non-resident individuals and legal entities may invest in Brazil directly by means of direct ownership of interests in Brazilian companies, or credit extended to a Brazilian resident individual or legal entity, or indirectly, in the Brazilian financial and capital markets. Registration of direct foreign investment is made through a self-responsive electronic system of the Central Bank of Brazil, in a simple and fast procedure.</p> <p>Brazilian law does not make a distinction between foreign and national investments, except for certain restrictions in key economic sectors, some of which have been largely eliminated in recent years.</p> <p>Important reforms dealing with the public pension system and labor legislation were approved by the Brazilian Congress in the past 3 years, which are considered important steps to increase international trade and foreign investment in Brazil. Some challenges still remain, such as a complex and heavy tax system, undeveloped infrastructure, a weak public educational system and lack of qualified workforce.</p>
26.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	As above mentioned, it is fair to say that the liberal approach has been predominant in the last 4 years in the context of the Temer and Bolsonaro's Federal administrations.
26.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	The government has the power to operate certain strategic or public service activities directly or through concessions or authorization. When transferred to private control, the federal and state governments supervise those activities through their regulatory agencies, such as, to name a few, the telecommunications, light and power, transport, oil and gas, healthcare and health products agencies. The laws providing for the possibility of state intervention in certain regulated activities is not, however, related to control by foreign investors.
26.4	Outlook on the Future - short/medium term
26.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	We do not expect an increase in state intervention initiatives on foreign investment in Brazil in the near future.
26.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	There are no consistent law making initiatives in this regard.
26.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.

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	We believe that the non-protectionist and more liberal approach should continue to set the trend in Brazil; however, the development of liberal global investment might be impacted adversely in the near future due to an increase of state intervention worldwide.
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27. Canada	
27.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Canada has generally been liberal and welcoming towards foreign investment. However, Canada takes a more restrictive approach to certain industries and certain types of foreign investors. In particular, Canada generally imposes more burdensome requirements on foreign acquisitions of control in “cultural” industries (<i>i.e.</i>, activities relating to books, magazines, periodicals or newspapers in print or electronic format; audio or video recordings; and broadcasting). In addition, Canada has had an evolving and stricter approach to foreign investments by state-owned enterprises (including entities influenced by foreign states), including lower thresholds for review and a more sceptical when assessing the merits of such investments. In addition, certain Canadian industries, in particular, telecommunications, airlines, banking and broadcasting, are subject to Canadian ownership requirements.</p> <p>As described below, inbound foreign investments may be subject to “net benefit” review (where certain financial thresholds are exceeded), <i>and</i> national security review. While investments that exceed the relevant net benefit review thresholds generally require certain commitments from the purchaser to the Government of Canada (<i>e.g.</i>, with respect to employment, capital expenditures, community involvement), no investments have been “blocked” in recent years. In substantially all cases, investors are able to negotiate an acceptable package of commitments with the Canadian government. Separately, 11 investments have been blocked or unwound on national security grounds since 2009.</p>
27.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>In recent years, Canada’s approach to foreign investment has generally become increasingly liberal. In 2016, the <i>Investment Canada Act</i> was amended to materially increase the threshold above which investments are subject to net benefit review. While the applicable thresholds vary based on the nature of the investor and investment, as an example, the typical threshold for direct acquisitions by non-state-owned investors has increased from C\$600 million in 2016 to C\$1.075 billion in 2020 (measured based on the enterprise value of the target Canadian business). Consistent with these high thresholds, the number of foreign investments subject to net benefit review has dropped substantially, from 22 in 2016 to 9 in 2019.</p> <p>Recent years have also seen an increase in the number of investments reviewed on national security grounds. While such reviews remain relatively rare, the frequency of these reviews has increased since 2012. The majority of national security reviews to date have related to Chinese investors, in particular those influenced by the Chinese government. However, Canada has also signalled an overall openness to Chinese investments, with many such investments approved over the years.</p> <p>As described below, Canada has communicated an increased focus on foreign investments (including both economic and national security considerations) in the wake of Covid-19.</p>
27.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Yes. Every acquisition of control of a Canadian businesses by a non-Canadian investor are subject to the <i>Investment Canada Act</i> and are required to either undergo either a net benefit review or make an administrative notification filing:</p> <ol style="list-style-type: none"> Notifications: a form-based filing that is required for investments that fall below the net benefit review thresholds. The filing can generally be completed post-closing and is straightforward to prepare. Net Benefit Reviews: investments that exceed certain economic thresholds are subject to net benefit review, which must generally occur pre-closing. Where a net-benefit review is triggered, government approval must be received on the basis that the investment will be of net benefit to Canada. Net benefit reviews typically take 60 – 75 days or longer to complete, and generally require the investor to agree to binding undertakings to demonstrate that the transaction is likely to produce a net benefit to Canada. These undertakings generally relate to matters such as maintaining certain levels of employment, R&D, capital spending, head office functions, community engagement and other activities in Canada for three to five years. <p>Separately, a broad range of foreign investments, including those that are subject to neither a notification nor net benefit review obligation, may be subject to national security review. The <i>Investment Canada Act</i>’s national security provisions are broad in scope and capture any investment that “could be injurious to national security”. If an investment is found to be injurious to national security, the investment may be prohibited (if the national security review occurs pre-closing) or the investor may be required to divest the Canadian business (if the national security review occurs post-closing). The investment may also be allowed subject to certain undertakings to the Canadian government. If a national security review is commenced pre-closing, the investment cannot close until government approval is obtained.</p>

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27.4	Outlook on the Future - short/medium term
27.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>In late April 2020, the Canadian government released a policy statement advising that, due to the extraordinary circumstances presented by Covid-19, certain foreign investments will be subject to enhanced scrutiny under the <i>Investment Canada Act</i>. The statement observed that sudden declines in business values brought on by the pandemic could lead to opportunistic investment behaviour and identified certain investments that will subject to enhanced scrutiny, namely:</p> <ul style="list-style-type: none"> • all foreign investments by state-owned investors, regardless of their value, or private investors assessed as being closely tied to or subject to direction from foreign governments; and • foreign direct investments of any value, controlling or non-controlling, in Canadian businesses that are related to public health or involved in the supply of critical goods and services to Canadians or to the government. <p>The government's policy statement reiterated the importance of foreign direct investment to the Canadian economy and confirmed that each investment will continue to be examined on its own merits.</p> <p>Early indications suggest that the government is in fact applying greater scrutiny to investments in the health sector. While it is too early to determine whether this new policy will result in greater intervention and less openness to foreign investment, we expect that investments in critical industries and infrastructure will continue to receive careful consideration under the Act's national security provisions.</p>
27.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>The Canadian government has released a policy statement regarding the application of the <i>Investment Canada Act</i> in the context of Covid-19. The policy statement is not a legislative change and does not alter or expand the government's power to review and intervene in foreign investments. Rather, it represents a change in bureaucratic approach and focus. The policy states that it will continue to apply until the economy recovers from the effects of the Covid-19 pandemic.</p>
27.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>The Covid-19 pandemic has exposed the vulnerability that many countries, including Canada, face in meeting their vital needs in times of crisis. We expect that in the short to medium term, Canada, along with other countries that have come to rely on complex global supply chains, will work to ensure the stability of domestic industries that are essential in the event of global disruptions. While this may increase the government's scepticism about foreign investment in certain contexts (in particular, investments involving foreign states and investments impacting critical health infrastructure), over the long term, we expect that Canada will continue to welcome and promote foreign investment. As a relatively small economy, Canada has long recognized the importance of foreign direct investment and globalization in supporting innovation and growth. Indeed, the Canadian government recognized the value of foreign investment even in its policy statement announcing heightened scrutiny in response to Covid-19. We expect that this logic will continue to hold and to drive a generally open approach to foreign investment.</p>

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28. Mexico	
28.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Over the last three decades, Mexico has become liberal and welcoming towards foreign investment. The United States is still Mexico's main commercial partner and foreign investment is largely regarded as an instrument of public policy with regulation currently in force that reflects a strong pro-business approach. Mexico's trade policy is very open with 13 Free Trade Agreements (FTAs) with 50 countries; 32 Agreements on the Reciprocal Promotion and Protection of Investments (APPRIs) with 33 countries; and 9 agreements for Economic Complementarity Agreements and Agreements of Limited Scope within the Latin American Integration Association (ALADI).</p> <p>Currently, foreign investment in Mexico is regulated by the Foreign Investments Law and its Regulations, which lay out the main legal framework. The Law applies to all foreign investments which include: (i) participation by foreign investors, regardless of percentage, in the capital stock of Mexican companies; (ii) investments by Mexican companies in which foreign capital has majority interest; and (iii) participation by foreign investors in sectors and activities contemplated in the Law.</p> <p>Restrictions on foreign investment in Mexico are activity specific based on the industry sector. Foreign investment regulations limit the participation of foreign persons to the following specific activities: (i) those reserved for the Mexican state, which include power and hydrocarbon-related activities (such as fossil fuels extraction, transmission and distribution of electric energy, nuclear energy, supervision and control of ports and airports, etc.); (ii) those reserved for Mexican individuals or entities with foreigner exclusion clause, which include domestic passenger and freight transportation; (iii) those considered of strategic importance and (1) which only allow certain capped percentage of foreign investment participation, such as, among others, passenger air transportation, newspapers, explosives and firearms, and port administration or (2) in which foreign investment can own a participation that exceeds 49% with the prior authorization of the Foreign Investment Commission (the "Commission"), such as private schools, legal services, construction and operation of railways or certain port services. Further, a favourable resolution from the Commission is also required for foreign investment to participate, directly or indirectly, in a percentage greater than 49% of the outstanding capital stock of a Mexican company when the aggregate value of the assets of such company on the date of acquisition exceeds the threshold determined annually by the Commission.</p> <p>In an effort to increase Mexico's attractiveness for investors, until 2018, the federal government consummated several changes to statutes that were perceived to be outdated, and the telecommunications and energy industry (oil, gas, and electricity) went through several changes to remove and decrease foreign investment restrictions. Regarding transactions, the busiest sectors during the last few years have been technology, financial services and insurance, followed by real estate, industrial and consumer products. Other key industry sectors that saw foreign investment inflow have been infrastructure projects, including hospitals and prisons, as well as traditional toll road, wastewater treatment plants and renewable energy.</p>
28.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>It is still unclear to what degree the historical position of Mexico's foreign investment policy has effectively changed. On the one hand, for example, ProMexico, created in 2007 with the purpose of attracting foreign direct investment into Mexico, was cancelled by decree shutting down all its activities since 2018. Additionally, in November of last year, the Executive branch cancelled the decrees whereby the Special Economic Zones (Zonas Económicas Especiales) were created in certain south-eastern states of Mexico to foster foreign direct investment and economic growth in the states of Chiapas, Veracruz, Michoacan, Guerrero, Oaxaca, Campeche, Tabasco and Yucatan. As initially structured, companies (with or without foreign investment) were to receive certain incentives if they chose to concentrate their operations in these special economic zones, including certain customs benefits and better facilities to foster trade and business.</p> <p>How the federal government perceives foreign investors remains to be seen. Foreign investment remains an integral part of the Mexico's economic future just as it is that we rely heavily on our industrial and commercial ties with the United States. The economies of the United States, Canada and Mexico are intertwined largely as a result of NAFTA; hence the importance of the new agreement, the T-MEC which should be replacing NAFTA in the near future.</p> <p>Considering structural obstacles for growth such as drug related violence, fluctuations to oil prices and corruption, it does seem that some actions taken by the Executive branch show a lessened regard towards investment (whether foreign or domestic). In practically all cases where the Federal Executive has taken a hostile position towards investment projects based on allegations of corruption underlying the securing of agreements or permits. To date, examples of such hostility are, in fact, not many, but enough to send mixed signals to investors. The two most clear examples are the cancellation of the construction of Mexico City's new international airport in 2018 and, most recently, the cancellation of an authorization to open and operate a beer production facility in the state of Baja California -which borders with the United States- in spite of reaching advanced building stages and after apparently having obtained, all necessary construction and operation permits.</p> <p>Most recently, private investment (mostly foreign investment) within the energy sector has been specifically hit by what many deem "a change of heart" towards private investment in gen-</p>

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	eral. Mexico's new "business plan" on energy, seems to be centred on re-delivering the monopoly over the oil and electricity industries to the Federal Government to the detriment of the private sector. Please refer to our answer in question 28.4.1. below.
28.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	As explained in Question 28.1., Mexico's foreign investment legal framework has been in place since the mid-1970's. The current Law and its Regulations were enacted in 1993, but since the mid-70's, the two foreign investment regulators have been (i) the National Registry of Foreign Investment and (ii) the Commission. The former is charged, in general, with recording all foreigners that, directly or indirectly, invest or otherwise regularly conduct commercial activities within Mexico (including Mexican entities that have foreign investment). The Commission regulates foreign investment in Mexico and is charged with issuing guidelines and promoting foreign investment, as well as approving the investment by foreigners in specific sectors and/or above certain threshold. Since the publication of the Foreign Investment Law currently in force, the Commission may prevent acquisitions by foreign investors on the basis of "national security" concerns. We are unaware that the Commission has ever exercised this authority in the past but it is important to highlight that neither the Law nor its regulations specify what qualifies as a "national security concern".
28.4	Outlook on the Future - short/medium term
28.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	The current Federal Administration -for reasons different than Covid-19- appears to have taken a state-centred approach towards many sectors of the economy which is at odds with private sector investment in general and not only as it relates to foreign investors. Many of the policies adopted by the Government affect sectors where foreign direct investment market-share is strong. Unfortunately, there is no publicly available information as to transactions that have been filed for authorization before the Commission and that have been blocked or opposed. To date, no sector has been targeted most clearly for an increase in state intervention than renewable energy production. The current administration, to date, is taking steps that are deemed by many to upend the energy reform implemented by the last administration. Through regulatory tweaks, the energy State Owned Entities—Pemex and the Federal Electricity Commission (CFE) are being allowed to gain market share. Hence, the government has renegotiated contracts with natural gas transportation companies, suspended permits needed for renewables' electricity generation companies, and suspended E&P bids.
28.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	A small number of initiatives amending or otherwise modifying the current Foreign Investment Law and its regulations have been presented, but none with respect to state intervention in direct foreign investment.
28.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	In the mid-term, we would expect countries to continue to look inwards. Countries that conform the top economies of the world have recently reformed or enacted new regulations on foreign investment. National protectionism has been looming in every foreign investor's mind during the last year and we expect stronger screening of foreign investment in all countries to continue. Like in Mexico, other OECD countries have had foreign investment regulations in place pre-COVID and governments are using such regulations to protect not only strategic assets of national interest, but also domestic companies or industries that may become takeover targets to foreign investor in the vulnerable post-COVID economy. It is undeniable that all countries will rethink their foreign investment and industrial policy going forward, but it is also true that regional investment and the intertwined industrial sectors of certain European, Asian and North American countries are here to stay. The global integration of the production chain is a reality that we do not foresee to end. Having said that, companies and their advisors need to re-think their deal process strategy going into cross-border transactions (mainly in strategic sectors). Timing, regulatory risk and public opinion in many cross-border transactions should be high on the list of issues that merit consideration and planning from the beginning of the deal process.

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29. Perú	
29.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	Since the early 1990s, Peru has been seen as liberal and welcoming towards foreign investment.
29.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	No.
29.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	In general terms, no. Although, most public concessions do include the right of the concessionaire (a public entity) to terminate the concession for public interest reasons. However, this mechanism has rarely been used and mostly related to corruption scandals.
29.4	Outlook on the Future - short/medium term
29.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	Although some measures that could be seen as interventionist might be taken in light of Covid-19, such as measures towards assuring supply of medicines or medical equipment and provision of health services during the pandemic and though Congress has filed certain legislation projects on those regards, we have no reasons to believe that, overall and in a more broader spectrum, Peru will increase state intervention on foreign investments in the near future.
29.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	Yes. First, the government included certain medicine to treat Covid-19 as part of the list of generics are mandatory for all pharmacies and drugstores to carry. Also, one of the leftist parties in Congress filed a legislation proposition to establish a cap on the price of certain medicine in times of emergency. This would most probably either not get approved or challenged by the executive branch or in constitutional courts.
29.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	We expect Peru to continue being liberal and welcoming towards foreign investments in the long run. We already have 30 consecutive years on that direction and the fundamentals are still there. Also, the fact that the country is able to provide certain economic relief gives more reassurance that the economic model has allowed us to develop and would continue to do so

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30. United States	
30.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	The United States has historically been the world's largest foreign investor and the largest beneficiary of foreign investment. U.S. policy towards inbound cross-border capital flows was among the most open, and the United States has historically encouraged other countries to liberalize their policies on trade and foreign investment through free-trade agreements and its role in multinational institutions. The primary limitation on foreign investment has been on transactions implicating national security concerns, as discussed in further detail below.
30.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>Yes. In the past several years, the United States has slightly raised barriers to foreign investment, a change that can be attributed primarily to:</p> <ol style="list-style-type: none"> 1. a growing concern over the rapid increase in Chinese investments in the United States, which has, as in other countries, has led to fears that the Chinese government may be able to access sensitive American technology; and 2. a general rise in populism and suspicion of foreign investment, immigration and global economic integration. <p>The Trump administration has moved to blacklist some Chinese firms, including most notably the telecom company Huawei, and has issued new rules restricting certain exports to China. Most recently, the administration broadened the scope of goods subject to restrictions for military end use to include a wider range of dual-use goods, <i>i.e.</i>, goods with both military and civilian uses. The rule will require export licenses for any transaction for not only direct military end users but also any private companies that support a military end use in China. The new rule will apply license requirements for exports of semiconductor equipment, aircraft parts, sensors and other technologies. In addition, U.S. policy with respect to review and approval of foreign investments in U.S. businesses has become significantly more restrictive in recent years, as discussed in further detail below.</p>
30.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>Yes. As noted above, the primary constraint on foreign investment in the United States is with respect to national security considerations. The Committee on Foreign Investment in the United States ("CFIUS") is an inter-agency committee of the U.S. government comprised of nine cabinet-level executive branch agencies and offices, and various other non-voting offices with national security responsibilities. CFIUS reviews certain foreign investment transactions within its jurisdiction (<i>i.e.</i>, "covered transactions") and advises the President on matters of national security arising from foreign investments. Relevant statutes and regulations authorize the President to review mergers and other transactions by or with any foreign person that could result in foreign control of a U.S. business. In connection with this review, the President may "suspend or prohibit any covered transaction when, in the President's judgment, there is credible evidence to believe that the foreign person exercising control over a U.S. business might take action that threatens to impair the national security."</p> <p>The CFIUS review process has historically been on a voluntary basis, meaning that even if the contemplated transaction could fall into CFIUS's scope, the parties involved did not have a legal requirement to file with CFIUS, although CFIUS could unilaterally decide to initiate a review if it perceived that a covered transaction could potentially pose a threat to national security. Recent changes (discussed below) have made certain filings mandatory.</p> <p>The typical review process takes 45 days (formerly 30 days), but for more complex situations that may require mitigation measures, the period is extended. Where a situation cannot be resolved by mitigation, CFIUS may recommend to the President that a transaction be blocked, in which case the President has 15 days to make a decision.</p> <p>Prior to 2018, CFIUS's jurisdiction was primarily limited to issues related to homeland security and critical infrastructure industries such as energy, transportation, communications, food and drug production and distribution, financial systems and natural resources. In 2018, with the passage of the Foreign Investment Risk Review Modernization Act ("FIRRMA"), CFIUS's jurisdiction was expanded to include up to 27 industries, and CFIUS's authority in these areas was significantly increased. However, there has been for many years some criticism of the use of the CFIUS regime to reach into areas (such as hotels and real estate) which are not obviously in a national security business.</p> <p>Key features of the FIRRMA include:</p> <ol style="list-style-type: none"> 1. Broadening of the definition of "covered transactions" by adding four new types of covered transactions: <ol style="list-style-type: none"> a. a purchase, lease, or concession by or to a foreign person of real estate located in proximity to sensitive government facilities; b. "other investments" in certain U.S. businesses other than through voting of shares; c. any change in a foreign investor's rights resulting in foreign control of a U.S. business or an "other investment" in certain U.S. businesses; and

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	<p>d. any other transaction, transfer, agreement, or arrangement designed to circumvent CFIUS jurisdiction.</p> <p>2. A filing fee equal to the the lower of (i) \$300,000, or (ii) 1% of the transaction value.</p> <p>3. Extension of the initial 30-day review period to 45 days, which may be extended by an additional 15 days under extraordinary circumstances.</p> <p>4. Implementation of a light filing or “declaration” that contains basic information regarding the contemplated transaction, which could lessen the review timelines.</p> <p>Although FIRRMA delays the applicability of its provisions until 2020, it authorized CFIUS to conduct pilot programs in certain provisions of the bill. On October 10, 2018, the first pilot program requires mandatory filing (as opposed to the initial voluntary nature of the filing process) for controlling or non-controlling investments made by foreign investors in 27 industries producing, designing or manufacturing “critical technology”. These industries include defense, computer manufacturing, semiconductors, biotechnology R&D and energy.</p>
30.4	Outlook on the Future - short/medium term
30.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>Yes. In light of the pandemic, an increased focus on medical and healthcare-related infrastructure and equipment can be expected in CFIUS's review of foreign investments. According to data from the U.S. Department of Commerce, in 2019, about 80% of the U.S. supply of antibiotics was made in China. CFIUS and its member agencies can be expected to examine closely any further foreign investments in the U.S. pharmaceutical supply chain, as well as potentially related joint ventures between U.S. and Chinese companies, or other cooperative research and development that CFIUS or other U.S. authorities might investigate. More generally the question of the benefits and drawbacks of greater global economic integration are increasingly a subject of public debate and may lead to more state intervention in the cross-border flows of capital and goods.</p>
30.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>On May 5, 2020, a member of the U.S. House of Representatives, Jim Banks, introduced a proposed bill that would significantly increase restrictions on Chinese investments in U.S. companies during the pandemic. In particular, the bill would prevent companies with ties to China from owning more than 51% of shares in the following entities:</p> <ol style="list-style-type: none"> 1. Business involved in critical infrastructure, as defined by the Defense Production Act of 1950; 2. Organizations engaged in the production and dissemination of news media (not typically reviewed under the current CFIUS framework); or 3. Entities otherwise determined to be critical to national security, critical infrastructure, or culturally significant by the President. <p>Other lawmakers have been encouraging the President to use CFIUS to more aggressively scrutinize and potentially block further Chinese investments in U.S. businesses, both within and outside the currently covered industries. Further lawmaking and regulatory activity in this area can be expected as scrutiny of Chinese and other foreign investment increases.</p>
30.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>While the long-term effects remain to be seen, it is clear that both national security and public health concerns are providing new rationales for protectionism and restrictions on foreign investment, especially in the healthcare and pharmaceutical areas.</p> <p>For years, CFIUS has been expanding its reviews beyond the traditional defense sector. It can be expected that the pandemic will accelerate this expansion. In particular, while biotechnology and similar companies were already being scrutinized by CFIUS prior to the pandemic, but now a much wider range of supply chains—for active pharmaceutical ingredients, basic medicines, and personal protective equipment—are likely to be examined as well.</p> <p>Beyond CFIUS, the pandemic has led the United States (and other countries) to re-evaluate the costs and benefits of global economic interdependence, which in part results from liberal policy regarding the flow of capital. Concerns that have grown for over a decade with respect to foreign investment are likely to continue to increase as lawmakers and regulators face increased pressure to protect the country's critical industries (both healthcare-related and otherwise) from foreign control.</p>

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31. Uruguay	
31.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Uruguay is -and has been throughout its history- liberal and welcoming of foreign investment. It has traditionally enjoyed a positive investment climate, with a strong legal system, economic stability and open financial markets.</p> <p>Generally speaking, the investments' promotion regime guarantees that foreign and domestic investors will receive equal treatment. There are several legal provisions that make this assertion more than only a general principle set forth in the Uruguayan investments' law; just to mention some examples:</p> <ul style="list-style-type: none"> - It guarantees the free transferability of capital and profits related to foreign investments, without delays and in freely convertible currency. All the investors are entitled to tax benefits by complying with the same requirements, regardless their nationality. - It does not establish restrictions on the citizenship or domicile of the shareholders and directors of corporations, except for certain specific activities considered to be of national interest. - It does not establish legal obstacles to commercial or financial agreements being drawn up in foreign currency. Legal enforcement of contracts may be made either in local currency or in the foreign currency originally agreed upon by the parties. <p>Moreover, Uruguay is part of bilateral or multilateral investment treaties⁵ which include key investor protections that are in line with most of the general pre-existing legal protections to foreign investments, i.e. (i) the obligation by the host country to treat investors from the other party as favorably as the host treats its own investors or those from any other country; (ii) permission for free and timely transfer of funds relating to an investment into or out of the countries; and (iii) international law standards requiring the host country to provide prompt, adequate, and effective compensation upon expropriation.</p> <p>These regulations and investment treaties are backed by Uruguay's well-regarded independent judiciary, highly regulated and transparent government public procurement system, and sound financial system in which know-your-client policies and prevention of money laundering are strict and in consistency with the international legal framework (OECD standards).</p>
31.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>No, the Uruguayan historical position has not suffered material changes and we do not foresee major changes to come, but only for those that may improve Uruguay's ability for capturing new investments. As a matter of fact, the new President (that took office March this year) has publicly announced during the presidential election campaign that if being elected, he would be focused on the attraction of new investments to the country. The implementation of such changes may take some time due to the impact of the COVID-19, though the Government already took some measures such as passing a new decree softening the requirements to obtain tax benefits in case of major construction and infrastructure works (applicable to both national and foreign investments).</p>
31.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>No, Uruguay does not have a legal framework on state intervention. There are no much protectionist regulations, as a matter of fact, which is pretty unique across the region.</p>
31.4	<p>Outlook on the Future - short/medium term</p>
31.4.1	<p>Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).</p> <p>We do not expect that the state will take negative intervention measures with respect to foreign investment in the country. On the contrary, as already mentioned we expect that the Gov-</p>

⁵ According with the information published by the Uruguayan Ministry of Economic and Finance, Uruguay is part of 30 investment treaties, with 31 countries, <https://www.mef.gub.uy/726/1/areas/acuerdos-de-inversiones.html>.

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	ernment will continue promoting the foreign investment and it is highly likely that it will pass new rules in the near future in order to foster and facilitate both the national and foreign investments. Please refer to answer 31.2.
31.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	We are not aware of any to the date. Furthermore, as mentioned in answers 31.2. and 31.4.1. the Government is going the other direction.
31.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	Even though it is still too soon to foresee how the world will emerge after the COVID-19 outbreak, we do believe that great part of the global investment will continue to flow into countries that respect the rule of law. So how the countries stand before the outbreak -and how protectionist they become during these times- will probably play a key role in the future flows of foreign investments. So, in that regards our take is that Uruguay is making the right decisions by not only avoiding protectionist measures, but instead putting new incentives for foreign companies to invest in the country.

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Asia Contributions by



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32. Bangladesh	
32.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>The last three decades have seen a slow but concerted effort by the Government to liberalise and open up the Bangladeshi economy. Privatisation of state-owned manufacturing units and financial institutions led to innovations and investment which substantially boosted the economy to encourage the Government to continue the trend. Nevertheless, the Government continues to hold on to its “veto” on FDI over a plethora of “controlled industries”, some of which, such as telecommunications, banking and power, are the biggest sources of FDI. The standard business tax regime is highly unattractive (corporate tax - 35%) but the Government provides generous tax holidays and incentives for FDI in its priority sectors such as manufacturing and export-oriented industrial undertakings in general and those who set up in special economic and export-processing zones. While ease of entry has always been a conversation the Government is willing to have, ease of divestment is not, and little has been done to improve rule of law and governance even though these factors play an important role in FDI attraction. In short, the answer is a bit of both – Bangladesh is liberal and welcoming (particularly to investors in its priority sectors) and protectionist towards others and “leavers”.</p>
32.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>There has not been any significant change in the historical position stated above, apart from an effort by the country's investment promotion agency, Bangladesh Investment Development Authority (BIDA), to coordinate an effort to improve Bangladesh's rankings in World Bank's Ease of Doing Business report. Priority has been given to “quick fixes” in the entry stage, but “difficult” indicators such as “Enforcing Contracts” and “Resolving Insolvency”, have not been addressed. Nevertheless, a political priority has been shown in the past year to improve the rankings, which may consequently improve FDI conditions in the coming years.</p> <p>It is notable, however, that Bangladesh has shut its stock market since the beginning of a nationwide shutdown from 27 March 2020. It is not clear, and there is no Government clarification regarding whether shutting down the bourse is a protectionist move or whether it is simply in line with shutting down all but emergency service provisions.</p>
32.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>The legal framework for foreign investment in Bangladesh comprises of a collection of overlapping primary and secondary legislations. The main pieces of legislation are as follows:</p> <ul style="list-style-type: none"> • Foreign Investment Promotion and Protection Act 1980 – A very general legislation mainly guaranteeing equal treatment of investors. • Industrial Policy 2016 – This policy defines “controlled industries”, i.e. those which require government approval to be established and registered, and “reserved” industries where private investment is not allowed. • Bangladesh Export Processing Zones Authority Act 1980 and Bangladesh Economic Zones Authority Act 2010 – Established special zones which receive preferential tax treatment and other incentives for industrial establishments inside the zone. <p>The “controlled” industries under the Industrial Policy 2016 are as follows:</p> <p>1) Deep sea fishing, 2) Bank/ finance, 3) Insurance, 4) Generation, supply and distribution of power, 5) Exploration, extraction and supply of natural gas/ oil, 6) Exploration, extraction and supply of coal, 7) Exploration, extraction and supply of other mineral resources, 8) Large-scale infrastructure (e.g. flyover, expressway, monorail, economic zone), 9) Crude oil refinery (re-cycling/ refining of lube oil as fuel), 10) Medium and large industries using natural gas/ condensate and other minerals as raw material, 11) Telecommunication (mobile/ cellular and land phone), 12) Satellite channel, 13) Cargo/ passenger aviation, 14) Sea bound ship transport, 15) Sea-port/ deep sea-port, 16) VOIP/ IP telephony, 17) Industries using heavy minerals accumulated from sea beach, 18) Explosive production, 19) Acid production, 20) Chemicals, 21) All kinds of sludge and fertilizer made from sludge, 22) Stone crushing.</p> <p>The Industrial Policy stipulates that there shall be no private investment (local or foreign) in the “controlled” sectors without the approval or “no-objection” of the relevant ministry of the Government. In practice, these sectors require mandatory licenses from designated regulators, which come with various conditions which generally include requirement of further approvals before transfer of ownership, acceptance of foreign investment, mergers, etc.</p> <p>The “restricted” industries under the Industrial Policy 2016 are as follows:</p> <p>1) Arms, ammunitions and other military equipment/ machinery, 2) Nuclear power, 3) Security printing and minting, 4) Forestation and mechanized extraction within the reserved forest</p>
32.4	<p>Outlook on the Future - short/medium term</p>

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32.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	At this stage, no such intervention is expected in Bangladesh. The only intervention the state has had so far during Covid-19 has been easing the approval route of foreign-held Bangladeshi companies to short-term loans from its parent/holding companies.
32.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	No publicly known law making initiatives of this kind are ongoing now.
32.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	In the long run, it is expected that Bangladesh will continue liberalising its economy barring a few sectors. It is a political priority of the current Government to improve its rankings in the "Ease of Doing Business" rankings which is likely to have a significant impact on lifting of restrictions on FDI.

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33. China	
33.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Generally speaking, China has been welcoming foreign investments since it started to adopt the “reform and opening-up” policy in 1978. Currently, foreign investments in China are regulated under a regulatory regime of “national treatment plus negative lists”.</p> <p>(a) Market Access</p> <p>China controls and manages the market access of foreign investments by the Catalogue for the Guidance of Foreign Investment Industries (外商投资产业指导目录, the “Catalogue”) and Special Administrative Measures on Foreign Investment Access to China (“Negative Lists”). The industries for foreign investments in China are divided into 4 categories: encouraged, restricted, permitted and prohibited and the Catalogue lists out the encouraged, restricted and prohibited industries for foreign investment, while industries outside the Catalogue are permitted industries. Foreign investments are not allowed to invest into prohibited industries and need to satisfy relevant requirements (and/or obtain special approval) to invest into restricted industries. From 2016, China started to issue the Negative Lists which would be treated as a exceptional list for the pre-access national treatment for foreign investment (which means that foreign investments shall be treated no less favourably than domestic investments in terms of market access before it is allowed to enter relevant markets in China). Foreign investments shall obtain approval before entering into the industries listed on the Negative Lists.</p> <p>(b) Approval and Filing Requirements</p> <p>Since the promulgation of the PRC Sino-foreign Equity Joint Venture Law in 1979, the establishment and change of foreign-invested enterprises in China must be approved by the Ministry of Commerce (“MOFCOM”) or its local agencies, and from 2016, China started to implement a parallel system of approval and filing (i.e. approval is required for investments in the field within the Negative Lists and filing is required for investments in the field outside the Negative Lists). Such foreign investment approval (and filing) regime, which has been adopted in China for almost 40 years in total, has been abolished after the coming into effect of the Foreign Investment Law of the People’s Republic of China (“PRC”) and its Implementation Regulation on 1 January 2020. From 1 January 2020, establishment of a foreign-invested company in China follow almost the same procedures as the establishment of a domestic company, except for the foreign investment information reporting requirement (when applicable) and the special industry approval which may be required for investments in the industries under the Negative Lists.</p>
33.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>The historical position of welcoming foreign investment has not changed and instead, with the promulgation and coming into effect of the Foreign Investment Law and its Implementation Regulation on 1 January 2020, the Chinese Government shows its commitment to further simplify the foreign investment process and level the playing field for foreign investors.</p> <p>The Foreign Investment Law and its Implementation Regulation introduced relevant new policies and rules to attract foreign investment, which includes, <i>inter alia</i>:</p> <p>(a) Establishing the one-stop registration system for foreign investors (except for the special approval for certain industries which shall be obtained separately) with the local branches of the PRC State Administration for Market Regulation (“SAMR”);</p> <p>(b) Strengthening the enforceability of investment promotion agreement/arrangements between the foreign investors with local governments;</p> <p>(c) Emphasizing and strengthening the protection of intellectual property, technology transfer and trade secrets of foreign investors; and</p> <p>Establishing the system of pre-access national treatment for foreign investment and Negative Lists to ensure equal treatment of domestic investment and foreign investment.</p>
33.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Generally speaking, the Chinese Government is gradually reducing its oversight over foreign investments in recent years and shifting away from onerous market entry licences and registrations, currently, China has two major legal frameworks on state intervention in case of foreign investment in China, namely the anti-trust administration and national security review.</p>

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(a) Anti-Trust Administration

According to the PRC Anti-Trust Law and the relevant implementing rules and regulations, filing is mandatory where the relevant thresholds are met in respect of ‘concentrations of undertakings’ i.e.:

- (i) a merger between business undertakings;
- (ii) a business undertaking’s acquisition, by way of equity or asset acquisition, of control over another business undertaking; or
- (iii) a business undertaking’s acquisition, by way of contract or other means, of control over, or the ability to exert a decisive influence on, another business undertaking.

Joint ventures are also subject to filing if the thresholds are met. In addition, the Anti-Trust Law does not distinguish between foreign and domestic transactions, and therefore foreign-to-foreign transactions are also subject to filing if there is a “concentration of undertakings” and the thresholds are met. If the relevant anti-trust filing thresholds are met, the Anti-Trust Law expressly prohibits the consummation of a concentration prior to merger control clearance being obtained, and provides for penalties for non-compliance, including the ability for the authority to reverse a transaction or have it declared void. Subject to certain exceptions, transactions satisfying certain conditions are qualified to be filed under the simplified procedure.

(b) National Security Review

1. Legislation

The national security review is a review of foreign investment in domestic enterprises of the defense sector and other sectors concerning “national security.” It was first established under the Notice of the General Office of the State Council on Establishing the Security Review System for the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (国务院办公厅关于建立外国投资者并购境内企业安全审查制度的通知), issued by the State Council in 2011 (“**2011 Notice**”). MOFCOM subsequently released its implementing rules in 2011. In addition, PRC National Security Law (2015) and Foreign Investment Law (2020) both mentioned the national security review procedure.

In 2015, the State Council announced another a notice on conducting national security reviews of foreign investment in pilot free trade zones (关于印发自由贸易试验区外商投资国家安全审查试行办法的通知, “**FTZ National Security Review Notice**”), to govern the review process in the 18 free trade zones in China.

2. Type of transactions covered by the national security review

The 2011 Notice defines two types of transactions to be covered by the regime:

- (i) foreign investment via an M&A transaction into a domestic enterprise in the defense sector (including enterprises in the vicinity of key or sensitive military installations);
- (ii) foreign investment via an M&A transaction into a domestic enterprise in key industries related to national security, if the foreign investor could obtain actual control over the enterprise.

For item (ii), the key industries include agriculture, energy, infrastructure, technology and equipment manufacture and the 2011 Notice limits the idea of “control” in item (ii) to the ownership, sole or combined, of more than 50 per cent of the shares, or sufficient voting power to materially influence the resolutions of the shareholders’ meeting or the board, or other types of actual control.

It is noteworthy that since the 2011 Notice is strictly limited to “foreign investor’s M&A of a domestic enterprise”, a foreign-to-foreign transaction is not covered.

The scope of transactions covered by FTZ National Security Review Notice is broader than the 2011 Notice, though it also defines the above two types. It covers not only M&A transactions but also greenfield investments. For the second type in item (ii) above, the key industries additionally include culture and information technology.

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	<p>3. Review Criteria</p> <p>The 2011 Notice specifies that a transaction should be evaluated from the following four aspects:</p> <ul style="list-style-type: none"> (iii) its impact on defense and security; (iv) its impact on economic stability; (v) its impact on social order; and (vi) its impact on R&D capabilities of critical technologies that have a bearing on national security. <p>The FTZ National Security Review Notice additionally includes two areas to be assessed: the impact on cultural security/public morality; and the impact on cybersecurity.</p> <p>As mentioned above, with the promulgation of the Foreign Investment Law, China is now adopting a regulatory regime of “national treatment plus Negative Lists” for foreign investments in China. It signals that Chinese Government’s oversight of foreign investment will be reduced and there will be a shift away from all kinds of market entry licences and registrations, except for foreign investments in those industries in the Negative Lists. The anti-trust filing and the national security review are the two major regulatory regimes for the Chinese Government to control the key industries and strengthen the protection of national security.</p>
33.4	Outlook on the Future - short/medium term
33.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>No. We would not expect China to increase the state intervention in case of foreign investment in the near future. Instead, the Chinese Government has already issued some rules and policies to further attract and encourage the foreign investment, such as the promulgation of the PRC Foreign Investment Law and its Implementation Regulation on 1 January 2020 as mentioned in Item 33.2 above.</p> <p>In addition, during the outbreak of COVID-19 in China, the National Development and Reform Commission and the Ministry of Commerce, by way of an announcement, launched a public consultation on the revision of the Catalogue of Industries Encouraging Foreign Investment (2019 Edition) on 19 March 2020. According to the announcement, the revision is aimed to further expand the scope of encouraged industries for foreign investment. On 22 May 2020, Premier Li Keqiang mentioned that the Negative Lists will be significantly reduced when he delivered the government work reports on behalf of the State Council during the 13th National People’s Congress.</p> <p>On 24 March 2020, the State Administration of Foreign Exchange and the People’s Bank of China issued a notice (银发[2020] 64号) increasing the macro-prudential adjustment parameter from 1 to 1.25, which in turn increases the upper limit of risk weighted outstanding cross-border financing from 2 to 2.5 times of the net assets and indirectly increases the foreign debt quota by 25% to encourage the expansion of investment into China.</p>
33.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	(a) No.
33.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	It would be difficult to predict the direction of the development of liberal global investment worldwide. However, with the promulgation of the PRC Foreign Investment Law and its Implementation Regulation, as well as relevant policies issued by the Chinese Government, it could be expected that Chinese Government would continue to foster a better business environment for

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foreign investors to attract more foreign investments in China.

On the other hand, due to the current tension between China and the United States and the uncertainty of when the pandemic will end, there also exists the possibility that the trade war would be restarted and last for a long time.

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34. Hong Kong SAR	
34.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	The Hong Kong Government believes in free market economy and supports a liberal investment regime. It welcomes foreign investment and upholds free market principles that reduces government interference.
34.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	No
34.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	Please see question 34.1
34.4	Outlook on the Future - short/medium term
34.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	No.
34.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	No.
34.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>Hong Kong's regulatory environment and favourable taxation policy continue to present itself a favourable choice for foreign investment.</p> <p>There are no restrictions imposed on nationality (or place of incorporation) of the shareholder of foreign companies and no requirements that the shareholder of foreign companies must be a resident in Hong Kong. The Hong Kong Government is generally permitting a 100 percent foreign ownership of a company and has in place extensive system of tax incentives to motivate foreign investment.</p> <p>The Hong Kong Government has been proactively expanding external trade and economic co-operation and has signed (22) Investment Promotion and Protection Agreements (IPPA) with foreign economies (namely the Association of Southeast Asian Nations, Australia, Austria, the Belgo-Luxembourg Economic Union, Canada, Chile, Denmark, Finland, France, Germany, Italy, Japan, Korea, Kuwait, the Netherlands, New Zealand, Sweden, Switzerland, Thailand and the United Kingdom) as of 16 June 2019, in order to strengthen mutual investment protection and to enhance a two way investment flow.</p>

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35. India	
35.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	Historically, India followed a protectionist path from its independence in 1947 till 1991 when it opened up its economy for foreign investment. Post 1991, various measures directed towards liberalizing foreign investment and integrating India with the global economy have been introduced by the Government and reforms have been initiated to welcome foreign investment in select sectors. Presently, it can be seen as liberal and welcoming.
35.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>Yes. India's foreign direct investment (FDI) norms generally permit foreign companies to invest in India without any prior approval (except for certain sensitive sectors requiring prior government approval). In view of the Covid-19 pandemic, the Government of India has revised the FDI policy with effect from April 22, 2020 mandating prior government approval for all FDI from neighbouring countries with whom India shares land borders, i.e., China, Pakistan, Afghanistan, Nepal, Bangladesh, Myanmar and Bhutan. Aimed at curbing opportunistic acquisitions of Indian companies taking advantage of the present low market valuations, investors from these countries (including where the beneficial owner is a citizen of one of these countries) will now require prior government approval for FDI in any sector in India. This includes direct or indirect transfer of existing stake by foreign investors, without any threshold and any change in beneficial ownership of an existing or future FDI into India. The biggest impact of this policy change will be on FDI coming into India through China, directly or indirectly.</p> <p>The Government of India has also announced that the FDI cap in defence manufacturing sector will be increased from 49% to 74% under the automatic route. With a view to enhance self-reliance in defence production and reduce the huge defence import bill, a list of weapons and platforms that will only be purchased only from domestic industries and not be imported from foreign vendors will be issued</p>
35.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	Yes. FDI in India has been permitted either under the automatic route and the approval route. While there is a blanket ban on FDI in sectors such as lottery, gambling and betting and real estate, there are specific sectoral caps and norms regulating FDI in sensitive sectors such as retail trading. Under the automatic route, the foreign investor is permitted to invest in an Indian company without any prior approvals. Investment under the approval route requires the prior approval of the Government of India. Prior to the Covid-19 pandemic, FDI up to 100% has been permitted in most sectors under the automatic route. It is pertinent to note that over the last few years, there has been an emphasis on further liberalizing the FDI regime and easing regulatory hurdles to attract FDI into India.
35.4	Outlook on the Future - short/medium term
35.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	Yes. As is seen across many jurisdictions, we can expect a tightening of the FDI framework in specific sectors on account of the Covid-19 pandemic to protect domestic industry. There are also media reports that the government may come up with rules to scrutinise Foreign Portfolio Investors from certain countries to restrict their unbridled access to the Indian market.
35.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	The FDI policy changes regarding approval for FDI from neighbouring countries has become law. The framework for providing approvals for FDI in certain sectors is already in existence through the Foreign Investment Facilitation Portal (FIFP), a single point interface of the Government of India to facilitate and expedite FDI through the approval route. Also
35.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	India remains an attractive destination for foreign investors and has been rolling the red carpet for foreign investment since 1991. While immediate protectionist measures have been taken to curb opportunistic takeovers in the wake of the Covid-19 pandemic, it is restricted to its neighbouring countries, especially China. The government has also announced structural reforms across sectors to attract FDI from global manufacturers looking to set up base in India and promote ease of doing business in India. One can therefore expect a continuation of a liberal and welcoming environment towards foreign investment in various sectors in the long run given the importance of FDI in India's overall economic growth.

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36. Indonesia	
36.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>Ever since Indonesia introduced its first investment law on 1967, the Government of Indonesia progressively attempting to liberalized its foreign investment policy. In the 1980s and early-1990s, Indonesia had a reputation for welcoming foreign investment by introducing a number of deregulation packages to liberalize its domestic market as well as several fiscal incentives to foster the investment appetite towards Indonesia. During the Asian Financial Crisis of 1997, Indonesia was struggling in maintaining the foreign investors due to weak regulatory and legal framework, massive foreign debt and monetary crisis, which in turn set the stage for the inward-looking and protectionist policies put in place.</p> <p>Although Indonesia has been welcoming foreign investment throughout decades, Indonesia also implemented the negative list investment where some business fields are restricted to both domestic and foreign investment, and some business fields are partially open for foreign investment. The negative list investment has been regularly revised and updated in order to provide relaxation and boost some economic sectors where domestic capacity deemed unable to compete.</p>
36.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>Since the current Indonesian President, Mr. Joko Widodo firstly elected in 2014, Indonesia has been once again moving towards building the attractiveness of the foreign investment. The moves were started with the issuance of several economic reform packages covering hundreds of regulations from 160 ministries aiming to combat bureaucracy.</p> <p>The Government firstly launched the Online Single Submission (OSS) system in 2018 and followed by its upgrade in early 2020. OSS was designed to do away with lengthy bureaucratic processes, the system reduces the need to complete piles of paperwork that previously undermined the realization of direct investment.</p>
36.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>Indonesia did not have any specific laws or regulations in relation to the state intervention of foreign investment. The interference of the Government of Indonesia is rather stipulated under multiple sectoral regulations.</p> <p>The followings are the example of state intervention in foreign investment:</p> <p>a. <u>Negative List of Investment</u></p> <p>The Negative list investment is regularly updated and revised, but it is not often that the revision caused a smaller percentage of foreign share ownership in certain sectors. Although it is claimed that the provision of the new negative list investment does not apply retroactively, its implementation is still heavy on the discretion on a case by case basis by the Indonesian Investment Coordinating Board.</p> <p>b. <u>Divestment Obligations</u></p> <p>Divestment of shares in Indonesia consists of two types of divestments, which are</p> <p>(i) Divestment by sectors, such as in the field of mining business which requires a holder of operation production mining business license to gradually divest certain percentages of its shares by firstly offered to the government and state-owned enterprises;</p> <p>(ii) Divestment for all foreign investment which has been established to divest its shares of the company listed in approval letter and/or business license. This usually occurs to the foreign investment companies established during the applicability of the old regulation regarding the Shares Ownership in Companies Established in the Framework of Foreign Investment issued in 1994.</p>

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	<p>c. <u>The Monopoly of Business Sectors</u></p> <p>Several business sectors that are deemed strategic for the national interest are still being monopolistic by the state-owned enterprises, such as electricity distribution and provisions of drinking water. A private company wishes to partner with the said state-owned enterprises must participate in a tender.</p>
36.4	Outlook on the Future - short/medium term
36.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>The Government of Indonesia has taken various measures to support the economy and business in response to Covid-19 pandemic outbreak, including giving the fiscal and non-fiscal incentives, as well as financial stimulus package. Such measures are intended to maintain the investment flow in Indonesia and attracting many more foreign investors to Indonesia. Any plan of increasing state intervention in case of foreign investment is remain unseen in the near future as Indonesia still expecting to welcome foreign investors and ease the investment procedures in Indonesia even further.</p>
36.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>Although not really relevant to the Covid-19 pandemic situation, since late 2019, the Government of Indonesia has initiated the draft of the omnibus bill on job creation. The omnibus law is made to improve, among others, the ease of doing business in Indonesia and attract investment, thereby boosting job opportunities and economic growth in Indonesia. The draft introduces a new concept of risk-based business licensing and simplifies business licensing and land acquisition processes, sectoral business licensing processes, and investment requirements (including to open more business sectors to foreign investment by replacing Negative List Investment with the Positive List Investment.</p> <p>The draft was initially targeted to be issued in early 2020. However, due to the strong protest from the labor groups and experts, the ratification of the draft is likely to be further delayed.</p>
36.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>The development of liberal global investment in Indonesia is rather hard to predict as it heavily depends on which sectors the president in office aim to focus on. The recent massive development of global investment has been very much influenced by one of the current Indonesian President goals, which is to attract foreign investment in Indonesia and increase Indonesia's rank in the ease of doing business surveys held by the World Bank. Unfortunately, the realization of this optimistic goal must be suspended as the covid-19 pandemic arises.</p> <p>In terms of the long-run outlook of global investment, the Government of Indonesia as well as the Government from other countries are now focusing on calculating the impact of Covid-19 towards the economy. Some countries, as well as Indonesia are preventing a foreign direct investment outflow from the country and recover the global economy while many counties have expressed their plan to tighten restrictions of foreign investment in order to protect the domestic business.</p>

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37. Japan	
37.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	(i) Liberal and welcoming
37.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	No. There has been an amendment of Foreign Exchange and Foreign Trade Act, where foreign investments into industries relating to national security more than 1% (inclusive) are now subject to advance review by the authority, where the ratio was 10% before. This can be regarded as a shift to protectionism but only limited to the security-related investments and overall position has not been affected. This amendment has no relation to COVID-19.
37.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	Basically not. Exceptions are limited industries relating to national security and public interests such as telecommunication, radio wave, broadcasting, aviation, energy, infrastructure, and military, to which the Government may decline the application or order changes to the business plan.
37.4	Outlook on the Future - short/medium term
37.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	I don't think so. Other than the sensitive industries, Japan will likely remain and even encourage foreign investments because in-bound business is and will be important for Japan to maintain its economy. COVID-19 disturbed a great amount of in-bound investment which Japan had anticipated, particularly as the 2020 Olympic has been postponed. Once the health concern is cleared, we want foreign investors to come back.
37.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	No.
37.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	Even though domestic companies are damaged by COVID-19, I don't think the Japanese Government takes protectionist approach by restricting foreign investments. Rather, it will maintain the door open to foreign investors as foreign investments will benefit the entire domestic economy.

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38. Malaysia	
38.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Malaysia has historically been seen as protectionist towards foreign investment. This derives from the New Economic Policy implemented in 1970 which was an affirmative action program sought to increase Bumiputera participation in the economy. Bumiputeras are people of the Malay race, aboriginal people and natives of Sabah and Sarawak.</p> <p>Previously, Malaysia imposed a requirement that all companies needing to list on the Bursa Malaysia stock exchange required 30% Bumiputera equity. Additionally, most regulators imposed a requirement for companies to have 30% Bumiputera equity in order to hold certain licenses. However, in 2009 and 2012, this requirement was liberalised amongst 45 specific sub-sectors (including inter alia specific telecommunication services, medical and health care services and education services) which have been permitted to have 100% foreign equity.</p> <p>Notwithstanding this, foreign investment in certain industry sectors is still restricted. Examples include the oil and gas industry in Malaysia, the construction industry, private higher education institutions with college statuses, private agencies and others. The Malaysian Ringgit ('MYR') is also very heavily protected with restrictions on the trading of the MYR outside of Malaysia. Malaysia also has exchange control rules in place to regulate the use of the MYR and foreign currency within and outside of Malaysia.</p>
38.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>The largest change was in 2009 and 2012 which involved the liberalisation of a total of 45 subsectors permitting foreigners to own businesses in Malaysia with 100% foreign equity. This position has remained unchanged to date.</p>
38.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>Yes. Regulators imposed policies or conditions on licences which have equity conditions attached to the same. Failure to comply with such policies or licence conditions results in the relevant company being ineligible to hold such licences and to operate in the relevant industry.</p>
38.4	<p>Outlook on the Future - short/medium term</p>
38.4.1	<p>Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).</p> <p>There is a proposed merger control regime which would have the effect of increasing state intervention in investment.</p> <p>Prior to the Covid-19 outbreak in January 2020, the Malaysia Competition Commission ('MyCC') proposed to amend the Malaysian Competition Act 2010 to introduce general merger control provisions sometime in mid-2020. As of the date of writing, there are still no specific details announced by the MyCC and it remains to be seen what sort of merger control regime will be implemented, i.e. whether it will be mandatory or voluntary. Previously, merger control restrictions were only implemented in the aviation and communication and multimedia sectors.</p> <p>On the other hand, on 30 April 2020, the Central Bank of Malaysia (known as Bank Negara Malaysia ('BNM')) released a new set of Foreign Exchange Notices ('FX Notices') which further liberalises our exchange control restrictions to encourage investment. These were issued after the Covid-19 pandemic.</p> <p>Residents are now free to obtain financial guarantees of any amount from non-residents where previously, residents were only allowed to obtain financial guarantees up to an aggregate limit of MYR 100 million. Further, residents are also generally free to issue financial guarantees of any amount to non-residents, subject to some exceptions. Previously, a limit of RM50 million applied. In addition to that, under the FX Notices, a non-resident investor is now free to undertake any type of investment in either MYR or foreign currency assets in Malaysia without any restriction, whereas previously there were certain limitations in amounts and types of assets that could be invested in.</p>
38.4.2	<p>Are there already any law making initiatives in place in this respect? (if yes, please give a short description)</p>

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	As mentioned in 8.4.1 above, the MyCC had announced in January 2020 that the Malaysia Competition Act 2010 would be amended to introduce general merger control provisions sometime in mid-2020.
38.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	Generally, Malaysia encourages global investment in Malaysia. Most recently in February 2020, the Ministry of International Trade and Industry ('MITI') announced that Malaysia will be undertaking extensive reforms in the investment process to improve the ease of doing business for both foreign and domestic investors in 2020. The MITI aimed to achieve this through its New Industrial Master Plan (IMP) and a renewed focus on opening up new overseas markets and improvements in the domestic investment landscape where "investors can expect red tape to be cut, bureaucracy to be reduced, and the approval process to be streamlined in order to expedite the realisation of investment". The MITI also said that the Government will continue to seek quality foreign direct investment with high-value added and high technology features.

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39. Nepal	
39.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>Nepal had historically adopted a protectionist approach towards foreign investment. Following economic liberalization in Nepal in mid 1980s and early 1990s, efforts have been made to attract foreign investment. However, the foreign investment laws restrict a number of sectors for foreign investment. Annex to the Foreign Investment and Technology Act 2019 ("FITTA") enumerates the industries that are not open for foreign investment. Aviation, consulting and telecom industries compulsorily require joint venture investments.</p> <p>Historic Nepali legislations related to foreign investment have mostly been protectionist with a few welcoming provisions. The first instance of such protectionist legislation was the Foreign Investment and Technology Transfer Act 1992 ("FITTA 1992") which repealed the erstwhile Foreign Investment and Technology Act 1981 and remained in force until 2019. FITTA replaced the FITTA 1992 in 2019.</p> <p>The FITTA 1992 introduced a list of industries in its Annex that were restricted for foreign capital investment. Such restriction did not exist in the 1981 Act. The list included industries relating to agriculture, tourism services and personal service business among others. The FITTA continued the restrictions of FITTA 1992. Similarly, under FITTA 1992, the minimum threshold of investment was set at NPR 5,000,000 (approximately USD 45,000). This threshold was increased following the promulgation of FITTA to NPR 50,000,000 (approximately USD 450,000).</p>
39.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>Nepal's current approach to foreign investment has been mixed. While the Government policy has been to promote foreign investment, the laws and complicated and time taking approval procedures can be deterrent and protectionist. The Constitution of Nepal states that the country's policy is to "encourage foreign capital and technology investment in areas of import substitution, export promotion, and infrastructure building". This stance is continued by the FITTA as its preamble states that it aims to attract foreign capital and technology investment.</p> <p>Attracting foreign investment has been a key agenda of the Government of Nepal ("GON"), which has been highlighted in the Federal Budget for the FY 2019/20 and in the Fifteenth Periodic Plan prepared by the National Planning Commission. The President of Nepal while presenting the annual policies and programs for FY 2020/21 of the GON on 15 May 2020 highlighted the importance of attracting foreign investment in productive sectors including large infrastructure projects. The GON has made attempts to attract investment through the promulgation of the FITTA as well as a Public Private Partnership and Investment Act in 2018 (PPPIA), however, several protectionist provisions remain.</p>
39.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	Foreign investment laws in Nepal have always required prior approval from a Government authority prior to making foreign investments.
39.4	Outlook on the Future - short/medium term
39.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	We do not expect Nepal to increase state intervention in case of foreign investment in the near future.
39.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	Not applicable.
39.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	The policy and programs that the GON presented on 15 May 2020 shows that Nepal is expectant of attracting foreign investment. This would probably lead to the adoption of more flexible policies on part of the GON to negate the economic impact caused by the present crisis. Before the pandemic, Nepal had upgraded laws in several areas of key concern for foreign investors. This includes the introduction of the aforementioned FITTA and PPPIA as well as Industrial Enterprises Act 2020, Environment Protection Act 2019, and Forest Act 2019. Therefore, we expect the GON to continue with the policy of attracting foreign investment with even more flexible policies.

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40. Pakistan	
40.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>Historically, Pakistan initially had mixed relationship towards foreign investment and has gradually over time liberalized its foreign investment regime. From independence in 1947 till 1958, the Government of Pakistan (the “GOP”) maintained strict control over foreign direct investment (“FDI”) (including in the fields of banking, insurance and commerce). In the late 1950’s, the GOP dismantled the import restrictions and liberalized its FDI systems and foreign banks were permitted to open and operate branches within Pakistan. During the early 1970s, the GOP nationalised several locally owned enterprises such as banks, oil companies and several other manufacturing companies while foreign banks and commercial enterprises were not affected as such. In order to grant foreign businesses some added protection the Foreign Private Investment (Promotion and Protection) Act, 1976 (the “1976 Act”) was introduced to provide equal treatment to foreign private investment and local private investment. The 1976 Act further provided that foreign private investment shall not be subject to other or more burdensome taxes on income than those applicable to investment made in similar circumstances by citizens of Pakistan or industrial undertakings having foreign private investment and shall be granted the same treatment as is granted to similar industrial undertakings having no such investment in the application of laws, rules and regulations relating to importation and exportation of goods.</p> <p>Since the era of nationalization, successive governments have recognized the necessity of changing their economic policy to compete globally. As part of the economic liberalisation policies of the GOP and to reverse the policy of nationalization, the Parliament enacted the Protection of Economic Reforms Act, 1992 (the “1992 Act”) which in addition to protection in respect of foreign currency accounts and foreign exchange transactions provided for blanket statutory protection for foreign investment, particularly in respect of those undertakings that had been privatized after being nationalized in the early 1970’s. The 1992 Act further provides the protection of the ownership, management and the control of any banking, commercial, manufacturing or other company/establish/enterprise transferred by the GOP to any persons would not be compulsorily acquired or taken over for any reason without compensation again and in compliance with applicable law. Furthermore, the 1992 Act also provided the protection that no foreign, industrial or commercial enterprise established or owned by a foreign or Pakistani investor shall be compulsorily taken over or acquired by the GOP. However, a remnant of the colonial era, the Land Acquisition Act, 1894 provides any provincial government the power of eminent domain. Under the aforementioned law where such land is required for a public purpose or for a company, the provincial government may issue a notification that such a land can be acquired for consideration approved by the District Collector in accordance with the requirements of the Land Acquisition Act, 1894.</p> <p>The Government of Pakistan introduced the current investment policy in 2013 (the “2013 Policy”) which aimed to address and adjust economic priorities in the face of the changing global scenario of economic slowdown coupled with domestic difficulties of power outages and continued pressure on the Pakistani economy due to war on terror. The 2013 Policy was guided by the following principles: (a) reducing the cost of business in Pakistan; (b) reducing the processes of doing business; (c) ease of doing business with creation of industrial clusters and special economic zones; and (d) linkages of trade, industrial and monetary policies for greater convergence. The 2013 Policy also introduced various other measures including, <i>inter alia</i>, all sectors and activities being open to foreign investors (excluding restricted industries such as arms, ammunitions, explosives, securities, currency, consumable alcohol, etc.), ease of registration of foreign companies in Pakistan, flexibility in financial procedures, promotion of small and medium enterprises and the promotion of alternate and renewable energy.</p> <p>In May of 2019, the GOP further introduced the Investment Promotion Strategy, 2020 to 2024 which has not yet come into effect, however it intends to further liberalize Pakistan’s approach to FDI and sets out the following objectives:</p> <ul style="list-style-type: none"> (a) Development of human and social capital; (b) Achieving sustained, indigenous and inclusive growth; (c) Democratic governance, institutional reform and the modernization of the public sector; (d) Ensuring energy, water and food security; (e) Private sector and entrepreneurship led growth; (f) Developing a competitive knowledge economy through value addition; and (g) Modernizing transportation infrastructure and greater regional connectivity. <p>That being said, the GOP has designated certain industry sectors where foreign investment, although not prohibited, is subject to additional restriction which may appear to be a disincentive</p>

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	<p>for foreign investors. These sectors have been outlined below:</p> <p><u>Banking Sector:</u> Foreign investors have been granted a general exemption to hold securities on a repatriable basis, irrespective of the nature of the business of the company as per the Foreign Exchange Manual issued by the State Bank of Pakistan. However, this exemption has not been granted to those entities directly or indirectly, owned or controlled by foreign governments unless special approval from the State Bank of Pakistan is sought.</p> <p><u>Aviation Sector:</u> As per the Civil Aviation Rules, 1994, enacted under the Pakistan Civil Aviation Authority Ordinance, 1982, foreign investors are not permitted to own more than 49% of any air transport undertaking registered within Pakistan.</p> <p><u>Broadcasting Sector:</u> The Electronic Media Regulatory Authority Ordinance, 2002, provides that a company holding or wishing to obtain a broadcast license: (a) cannot have more than 49% of its shares owned or controlled by a foreign national; (b) be managed or controlled by foreign nationals or companies; or (c) be funded or sponsored by a foreign government or organization including a non-government organization.</p> <p><u>Print Media Sector:</u> The Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, provides that foreign ownership of any interest in a newspaper requires prior approval of the GOP and is limited to 25% of such interest (whether owned or controlled).</p> <p><u>Securities Market Sector</u> Pursuant to Stock Exchanges (Corporatization, Demutualization and Integration) Regulations, 2012 (the “2012 Regulations”), foreign persons, other than foreign anchor investors⁶, shall not collectively, whether directly or indirectly, acquire or hold more than 20% of the total issued share capital of the Pakistan Stock Exchange.</p> <p>In addition to the foreign ownership restrictions mentioned above, there are also general ownership restrictions for certain sectors within Pakistan, which are applicable to both locals and foreigners. These sectors include:</p> <p><u>Telecommunication Sector</u> Under the of the Pakistan Telecommunication (Re-Organisation) Act, 1996, no person can directly or indirectly hold more than 10% of the voting shares of the Pakistan Telecommunication Company Limited except in accordance with the Articles of Association, which will require the approval of the GOP.</p> <p><u>Insurance Sector</u> The Insurance Ordinance, 2002, provides that no company or body corporate, either by itself or acting in concert with other purchasers, may own more than 10% of an insurance company without prior approval of the Securities and Exchange Commission of Pakistan.</p> <p><u>Banking Sector</u> The Banking Companies Ordinance, 1962, provides that permission from the Ministry of Finance on the recommendation of the State Bank of Pakistan shall be required in case of acquisition of more than 5% of any bank or financial institution.</p>
40.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?

⁶ Defined under the 2012 Regulations as a financial institution eligible as per regulation 40 of the 2012 Regulations or a consortium of financial institutions and/or strategic investor, which acquires at least twenty five per cent shares of the Exchange and in case of a consortium the leading financial institution or Strategic Investor holds at all times at least sixty percent of shares acquired or held by the consortium and acts as an anchor investor.

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	The historical position towards FDI has not changed in recent times and has in fact become even more liberal to garner FDI.
40.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	Under the current legal framework, foreign shareholders and foreign directors require approval by the Ministry of Interior of the GOP. However, such approval is a post facto requirement and the foreign shareholder and/or foreign directors is permitted to give an undertaking that in the event that such an approval is not granted, it shall transfer its shareholding or resign from its directorship in favour of any other party whether foreign or local provided the same has security clearance.
40.4	Outlook on the Future - short/medium term
40.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	It is not likely that the GOP will increase state intervention in the case of foreign investment and is likely to further liberalize the investment process of Pakistan.
40.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	There are currently no active initiatives to develop state intervention laws for foreign investment.
40.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	Until the global demand for goods reaches the levels it was prior to the severe disruptions caused by the Covid-19 pandemic, developed countries will considerably be less likely to invest in developing countries. This will have severe repercussions on such developing countries as they are heavily reliant on foreign investment which in turn permits them to receive in foreign exchange. Developed countries themselves are facing a severe backlash due to the soaring unemployment rates affecting their populations which is resulting on the governments focusing on the improvement of the small and medium sized enterprises to reduce the unemployment levels as large scale business are beginning to fail. In conclusion, although the liberal global investment system is not in any danger of being eradicated, it will be a few years until we see the system of which we are accustomed to come back into play.

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41. Sri Lanka	
41.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>In 1978, Sri Lanka shifted away from a socialist or style planned economy and opened up to foreign investment. This resulted in a net FDI of 1.4% of the GDP in 1979 from a mere 0.05% in 1978 and - 0.03% in 1977. This was followed by further liberalisations over the years.</p> <p>In 2018, the total FDI was approximately USD 2.1 billion.</p>
41.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>Generally no when it comes to the possibility for non-residents to invest in shares of local companies. That said, there are some administrative initiatives during the last 6 months or so when it comes to regulatory action and licensing which, if implemented would adversely affect non-resident investment in shares of companies carrying on business in certain areas. In addition in the last several years there have been certain macro developments which were inimical to foreign investment as described below.</p> <p>Sri Lanka's open economic policy (except for certain restrictions imposed on foreign investors investing in a few businesses in Sri Lanka) has remained more or less the same since 1978.</p> <p>But, the following relatively recent policy decisions may be of importance:</p> <ol style="list-style-type: none"> 1. A significant change occurred in 2014 in relation to the acquisition of land by non-citizens. The Land Alienation Act, no. 38 of 2014 prohibits the transfer of title of any land situated in Sri Lanka, if such transfer is— (a) to a foreigner; or (b) to a company incorporated in Sri Lanka under the Companies Act where any foreign shareholding in such company, either direct or indirect, is fifty per cent or above; or (c) to a foreign company, with only a limited exceptions. <p>The preamble of the Act expressed the position that these restrictions on transfer and leasing of land by non-residents was <i>deemed expedient and necessary to ensure the prudent use of land which is a limited resource, in a manner that preserves the national interest.</i></p> <ol style="list-style-type: none"> 2. The Revival of Underperforming Enterprises and Underutilised Assets Act no. 43 of 2011 - The Act sought to expropriate property of thirty seven identified underperforming enterprises or underutilized assets where land belonging to the State was leased to an enterprise. A press release issued by the Central Bank of Sri Lanka shortly after the passing of the Act attempted to justify this legislation stating that <i>the Revival of Underperforming Enterprises and Underutilized Assets Act does not, in any way, constitute the nationalization or the expropriation of private assets, but instead, is designed to ensure the productive use of assets that have hitherto been lying abandoned or have been seriously underutilized.</i> 3. Sri Lanka has been ranked 142 out of 190 countries in the "Paying Taxes" section in the global Doing Business survey by the IFC in 2019. This is mainly due to the multiplicity of taxes and the administrative difficulties in paying taxes by SMEs. The difficulties have been compounded by certain periodic arbitrary actions which have directly affected foreign investors. <p>The Board of Investment of Sri Lanka was established in 1978 with the intention of attracting foreign investment to Sri Lanka.</p> <p>Section 17 of the Board of Investment of Sri Lanka Law, no. 4 of 1978 (as amended), provides as follows:</p> <p><i>17(1) The Board shall have the power to enter into agreements with any enterprise in or outside the Area of Authority and to grant exemptions from any law referred to in Schedule B hereto, or to modify or vary the application of any such laws, to such enterprises in accordance with such regulations as may be made by the Minister.</i></p> <p>Schedule B of the Board of Investment Law includes the Inland Revenue Act.</p> <p>Through the Inland Revenue Act, no. 24 of 2017, Government has taken several measures to enhance revenue mobilization through <i>inter alia</i>, <u>rationalizing tax exemptions and concessions</u>. The Government introduced enhanced capital allowances as investment incentives, and therefore, the BOI has limited the granting of income tax exemption to new investments. This is a strategic measure of the Government arguably designed to encourage large foreign investments in capital assets as opposed to the previous exemption from income tax which attracted small and medium sized foreign investors. The problem is that tax legislation can change frequently.</p>
41.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p>

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	<p>Sri Lanka has currently entered into Bilateral Investment Agreements with 28 countries. Sri Lanka has also entered into Agreements for the Avoidance of Double Taxation with 38 countries. There is a constitutional protection of BITs and Investment Protection Agreements enshrined in Article 157 of the 1978 Constitution of Sri Lanka which provides that "...where Parliament by resolution passed by not less than two-thirds of the whole number of Members of Parliament (including those not present) voting in its favour approves as being essential for the development of the national economy any Treaty or Agreement between the Government of Sri Lanka and the Government of any foreign state for the promotion and protection of the investments in Sri Lanka of such foreign state, its nationals or of corporations, companies and other associations incorporated or constituted under its laws, such Treaty or Agreement shall have the force of law in Sri Lanka, and otherwise than in the interests of national security, no written law shall be enacted or made and no executive or administrative action shall be taken in contravention of the provisions of such Treaty or Agreement". Article 157 therefore accords foreign investors with a guarantee that no legislative, executive or administrative measures would be taken in contravention of any provisions of a BIT except in the interests of national security.</p>
41.4	Outlook on the Future - short/medium term
41.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	<p>There was no State intervention, (in the context of Covid-19), in regard to regulation of foreign investment in particular. The Government, in the light of the existing crisis situation of the country, through the Central Bank of Sri Lanka decided to allocate a LKR 50 Billion Re-financing Facility to support business and the economy. <u>These concessions are said to be available to companies held by foreign investors as well.</u> Some key concessions are as follows:</p> <p>Debt Moratorium for interest and capital to all eligible sectors impacted by the economic slowdown. Existing tenure of loans eligible for debt moratorium were also extended accordingly by 6 months.</p> <p>Permanent Overdraft and Trade Finance Facilities falling due for settlement or maturing during the period up to 25 March 2020 - extended up to 30 September 2020. Interest rates capped at 13%.</p> <p>Working Capital Loan - higher of 2 months working capital requirement of the business or LKR 25 million per bank per borrower (LKR 10 million per other financial institutions per borrower) - two year loan at 4% interest.</p> <p>Investment Purpose Loan - LKR 300 million per bank per borrower to expand business activities – only granted by banks - five year loan at AWPLR + 1.5% interest.</p> <p>Eligible parties</p> <p>Direct and indirect export-related businesses</p> <p>Apparel, Tourism, IT, Tea, Spices and Plantation</p> <p>Small and Medium Enterprises (SMEs)</p> <p>Manufacturing, Services, Construction, Agriculture and Agri Processing Businesses, Trading & Value Addition Businesses, & Domestic pharmaceutical suppliers with turnover below LKR 1 bn</p> <p>Other parties adversely affected by work disruptions</p> <p>Logistic Suppliers</p> <p>Foreign currency earners</p> <p>Individuals and Corporates who have to repay loans in foreign currency</p> <p>Import facilities other than pharmaceutical drugs, medical equipment, food, fertilizer and essential raw materials and machinery and equipment will not be entitled for these concessions.</p> <p>Worryingly, a temporary suspension of imports of all items other than certain essential imports for three months, (envisaged to prop up the rapidly depreciating Sri Lankan Rupee), was imposed during the period of curfew which was put in place to deal with Covid 19 and which led to considerable economic shut down; and this ban adversely affects some foreign investments.</p>

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41.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	No. Circulars have been issued by the Central Bank of Sri Lanka.
41.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	I would not expect that the legal/regulatory foreign investment regime would become greatly restrictive simply due to Covid 19. Political and other considerations such as protectionism may in time bring in more administratively imposed licensing and registration restrictions.

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42. Thailand	
42.1	<p>Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?</p> <p>Thailand would be considered as liberal and welcoming foreign investment. However, the laws set out certain controls, restrictions and prohibitions to protect business operation of Thai nationals.</p> <p>The primary body of law with respect to foreign participation in business activities is the Foreign Business Act 1999 (FBA), under which foreigners are restricted from participating in the different types of business activities unless specific approval is sought from and granted. The activities that are restricted to foreigners are divided into three lists, including</p> <ul style="list-style-type: none"> List 1 reserves certain core business activities that are deemed to be important to the Thai national interest, to Thai nationals and Thai-owned or Thai majority-owned Thai entities only. Types of business activities included in List 1 relate to the Thai public and/or the fundamental economic activities from which most Thais earn their living, such as engaging in agriculture, trading in agricultural products, and trading in land. List 2 is divided into three chapters. The business activities, which are listed in Chapter 1 of List 2, involve the issue of Thai national safety or security such as domestic transportation by land, water or air, including domestic aviation. The remaining two chapters of List 2 involve businesses having impacts on arts, culture, traditions, customs, folklore handicrafts, natural resources and/or the environment of Thailand. A license must be obtained from the MOC (with the approval of the Thai Cabinet) with Thai nationals holding at least 40% of the share capital in order to operate a List 2 business. List 3 contains a list of business activities in which Thais are not ready to compete with foreigners. List 3 has many types of businesses, including a catch-all category called "other services," but nevertheless allows foreigners to conduct such businesses under a written exemption (called a foreign business license or FBL) issued by the MOC (on a case-by-case basis) with approval of the Foreign Business Committee prior to commencing its business operation. <p>The FBA also provides certain exemptions on the requirements to obtain the FBL for the operation of restricted businesses under List 3. These include (i) the exemption for foreigners doing business in Thailand under a treaty to which Thailand is a party or is obligated to abide (e.g., the U.S.-Thai Treaty of Amity and Economic Relations, the ASEAN Framework Agreement on Services (AFAS), and the ASEAN Comprehensive Investment Agreement (ACIA)), and (ii) the exemption for foreigners who obtain an investment promotion from Thailand's Board of Investment (BOI). In order to take advantage of the exemptions, a qualified foreigner must obtain a foreign business certificate or FBC (and not the FBL) prior to commencing restricted activities in Thailand.</p> <p>Foreigners may also be restricted to operate certain businesses under other specific laws. For example, the Telecommunication Business Act 2001 requires that the applicants for type two and type three telecommunication business licenses must not be a foreigner under the law on foreign business (e.g., the FBA).</p>
42.2	<p>Has the historical position of your jurisdiction changed recently? If yes, for which reasons?</p> <p>There has been no significant change to the position of Thai laws regarding foreign investment in recent years.</p>
42.3	<p>Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?</p> <p>There has been no legal framework explicitly on state intervention in case of foreign investment in Thailand.</p>
42.4	<p>Outlook on the Future - short/medium term</p>
42.4.1	<p>Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).</p> <p>From the past experience and current situation, it is more likely that the Thai Government would provide more supports and incentives on foreign investment in Thailand, as opposed to implement or increase state intervention in case of foreign investment. However, the recent pandemic of COVID-19 has caused major disruptions to businesses globally, and projections of the full impact of it on the economy remain extremely uncertain. This may make it challenging to establish whether or not the COVID-19 would affect the Government's direction toward the foreign investment in Thailand in any respect.</p>

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42.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	No.
42.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>It would be difficult and premature to confirm the direction of the development of foreign investment in Thailand as this would depend on several relevant factors.</p> <p>In the past decades, there has been cooperation among the ASEAN member states to promote liberal investment within the region. These include, among others, the establishment of the ASEAN Framework Agreement on Services (AFAS), and the ASEAN Comprehensive Investment Agreement (ACIA), which relax restrictions under local laws of the member states applicable to investments from other member states within the ASEAN. Such relaxation has been reflected in Thai laws as one of the FBL exemption as discussed in question 13.1 above. This cooperation among the ASEAN member states is still on-going and, therefore, it could be expected that the liberal investment within the ASEAN will continue to increase.</p>

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Oceania Contributions by



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43. Australia	
43.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>Australia is a net importer of capital which means it encourages foreign investment. However, Investments made by foreign persons are classified as either significant actions or notifiable actions. Only notifiable actions made by foreign persons must be notified to the Foreign Investment Review Board (FIRB) for approval before proceeding. FIRB reviews notifiable actions to determine whether they are contrary to the Australian national interest. The Treasurer can still make orders in relation to a significant action that is not a notifiable action even after the action has already been taken if the Treasurer determines that the significant action is contrary to the Australian national interest. Only foreign investments that are not contrary to the Australian national interest will be approved by FIRB. Once a foreign investment is approved by FIRB, the foreign person will be permitted to proceed with the investment</p>
43.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>On 29 March 2020, the Treasurer announced temporary changes to foreign investment regulations. Significantly, the changes will see:</p> <ul style="list-style-type: none"> • all monetary thresholds reduced to A\$0 for all investors • timeframes for FIRB's review of applications extended from 30 days to up to 6 months <p>The change to the monetary thresholds aims to protect Australia's national interest by allowing greater government screening into proposed foreign investments. The changes took effect from 10.30pm on 29 March 2020 (Effective Date) and are expected to last for the duration of the COVID-19 pandemic. The temporary changes have not amended the meaning of significant and notifiable actions. Only foreign investments that meet both the tests for significant or notifiable actions and the amended monetary thresholds will be required to notify FIRB and seek approval in respect of the investment.</p>
43.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>For the purposes of applications to FIRB significant and notifiable actions include investments where the foreign person obtains an interest in:</p> <ul style="list-style-type: none"> • Australian land • Australian businesses • Australian agribusinesses • Australian commercial or residential real estate • Australian leases <p>Certain foreign persons and investments may be exempt from notifying FIRB in respect of their investment. Under the existing law, investments that did not reach the relevant threshold were not classified as either significant or notifiable actions. Monetary thresholds differed depending on:</p> <ul style="list-style-type: none"> • if the foreign investor is from a country with a free trade agreement with Australia (i.e. US, NZ, Japan, China) • the type of interest the foreign investor is obtaining (i.e. interests in sensitive/non-sensitive businesses, media businesses, agribusinesses, vacant/non-vacant land, mining land) • if the foreign investor is a government or non-government investor (i.e. all thresholds for foreign government investors are A\$0) <p>Some monetary thresholds were as low as A\$0 or as high as A\$1,192 million.</p>
43.4	Outlook on the Future - short/medium term

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43.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).
	Effectively, all significant and notifiable actions will meet the monetary threshold for the duration of the temporary changes. The removal of monetary thresholds will likely see an increase in the volume of notification applications, adding to the administrative burden on FIRB. This will likely result in delays in processing applications.
43.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	As per 43.2
43.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>The policy behind the changes was to prevent acquisition of Australian assets by foreign investors for “fire sale” prices. It is likely that the regulation of foreign investment will revert to the existing regime as the Australian economy begins to grow again.</p> <p>The Chinese government's response to the Australian government's</p> <ul style="list-style-type: none"> • early intervention to prevent travel from China to Australia; and • call for an enquiry into the origin and spread of COVID; <p>has been to restrict the import of Australian goods to China. As there is significant investment by Chinese controlled groups into Australia, it's possible that future investment may be curtailed.</p>

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44. New Zealand	
44.1	Can your jurisdiction historically be seen as (i) liberal and welcoming or (ii) critical and protectionist towards foreign investment?
	<p>Historically, foreign investment has generally been welcomed in New Zealand and all levels of Government are keen to promote business, economic development and employment. Foreign investment is viewed as important for New Zealand's economic growth, although the foreign investment law attempts to balance the encouragement of investment in New Zealand with the view that it is a privilege, not a right, for overseas persons to invest in the country.</p> <p>Not all foreign investment transactions require regulatory consent, and the Government's general approach is to weigh the need for highly beneficial overseas investment against the need for New Zealand to maintain ownership and control of sensitive New Zealand assets. The regulatory regime reflects this general policy approach by applying a level of control to discourage undesirable investment</p>
44.2	Has the historical position of your jurisdiction changed recently? If yes, for which reasons?
	<p>A change in Government as a result of the 2017 general election meant that New Zealand's foreign investment regulatory regime was amended in 2018, with the changes providing stricter controls in some areas, but a more streamlined approach in others. The key changes were to restrict overseas persons buying residential property in New Zealand, as well as to introduce measures to encourage foreign investment in forestry.</p> <p>The Government also embarked on the second phase of its foreign investment regulatory reform in 2019 (Phase 2 Reform), with the main proposed changes being:</p> <ul style="list-style-type: none"> • further protection for New Zealand assets – through the proposed introduction of a new national interest test granting the Government power to decline certain foreign investment consent applications where it considers the investment not to be in the national interest, and the ability for the Government to “call-in” foreign investment transactions (that are not otherwise caught by the consent regime) in respect of investments in certain strategically important businesses, and make those transactions subject to the national interest test; and • the introduction of a range of changes designed to streamline the application of the foreign investment regime, simplifying its complexity – through rationalising numerous elements of the application process and regime to remove immaterial transactions/considerations, and providing that certain New Zealand controlled entities currently classified as “overseas persons” will not be subject to the regime. <p>These second phase proposals have not yet been made into law – the draft legislative bill containing the changes was only introduced in March 2020, and has since been further amended in relation to the challenges brought on by the Covid-19 crisis (see below).</p>
44.3	Prior to the Covid-19 pandemic, did you jurisdiction have a legal framework on state intervention in case of foreign investment in place?
	<p>The Overseas Investment Act 2005 (Act) and the Overseas Investment Regulations 2005 (Regulations) regulate foreign investment in New Zealand.</p> <p>Certain overseas persons who propose to acquire, or acquire control of, ‘sensitive’ land (including residential land) and/or significant business assets and/or fishing quota in New Zealand need to apply for consent under the Act. However, certain transactions do not require consent. The relevant Government Ministers, or the New Zealand Overseas Investment Office (OIO) under delegation, make decisions in accordance with the criteria set out in the Act and the Regulations. The OIO is responsible for screening all investment proposals that fall within the criteria set out in the Act and the Regulations, and for monitoring compliance with any conditions of consent granted under the Act. There are penalties for failure to comply with any of the requirements of the Act or Regulations.</p> <p>Transactions involving the acquisition of an offshore entity which owns, either itself or through its subsidiaries, sensitive land or significant business assets in New Zealand may require consent under the Act despite the transaction taking place outside of New Zealand.</p>
44.4	Outlook on the Future - short/medium term
44.4.1	Would you expect your jurisdiction to increase state intervention in case of foreign investment in the near future? If yes (i) for which reasons (e.g. Covid-19 or other reasons), (ii) in which way (area of application, power of state in this context).

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	<p>In mid-May 2020 the New Zealand Government introduced further proposed changes to the foreign investment regime in light of the Covid-19 pandemic. In order to protect key New Zealand assets as the economy recovers from the pandemic, parts of the proposed Phase 2 Reform (referred to under the second question above) that are considered critical to the Government's Covid-19 economic response have been brought forward under urgency, including the proposed national interest test.</p> <p>The Government has also proposed the introduction of a temporary requirement for foreign investors to notify the Government of certain transactions so these can be assessed to see whether they are contrary to New Zealand's national interest. This temporary power would apply to foreign investments that are not otherwise caught by the consent regime and that result in certain ownership or control thresholds being met, regardless of the dollar value of the investment. Once in force, the power will be reviewed every 90 days and will only remain in place while the Covid-19 pandemic and its associated economic impacts continue to have a significant effect in New Zealand.</p> <p>The proposed urgent reforms follow those of other jurisdictions taking similar steps, and are intended to protect key New Zealand assets from falling unnecessarily into foreign ownership as the economy recovers from the fallout of the pandemic. However, the reforms are not closing the door on foreign investment in New Zealand nor intended to make it unduly hard to invest – more capital will be needed to facilitate the recovery of New Zealand's economy as it comes through the Covid-19 crisis and much of this capital may need to come from overseas. The Government has reiterated that it welcomes productive, sustainable, and inclusive foreign investment.</p>
44.4.2	Are there already any law making initiatives in place in this respect? (if yes, please give a short description)
	<p>In mid-May 2020 the New Zealand Government introduced further proposed changes to the foreign investment regime in light of the Covid-19 pandemic. In order to protect key New Zealand assets as the economy recovers from the pandemic, parts of the proposed Phase 2 Reform (referred to under the second question above) that are considered critical to the Government's Covid-19 economic response have been brought forward under urgency, including the proposed national interest test.</p> <p>The Government has also proposed the introduction of a temporary requirement for foreign investors to notify the Government of certain transactions so these can be assessed to see whether they are contrary to New Zealand's national interest. This temporary power would apply to foreign investments that are not otherwise caught by the consent regime and that result in certain ownership or control thresholds being met, regardless of the dollar value of the investment. Once in force, the power will be reviewed every 90 days and will only remain in place while the Covid-19 pandemic and its associated economic impacts continue to have a significant effect in New Zealand.</p> <p>The proposed urgent reforms follow those of other jurisdictions taking similar steps, and are intended to protect key New Zealand assets from falling unnecessarily into foreign ownership as the economy recovers from the fallout of the pandemic. However, the reforms are not closing the door on foreign investment in New Zealand nor intended to make it unduly hard to invest – more capital will be needed to facilitate the recovery of New Zealand's economy as it comes through the Covid-19 crisis and much of this capital may need to come from overseas. The Government has reiterated that it welcomes productive, sustainable, and inclusive foreign investment.</p>
44.5	Outlook on the Future - in the long run, in which direction would you expect the development of liberal global investment to go.
	<p>As outlined above, foreign investment is generally seen as important for New Zealand's economic growth (whether during the Covid-19 pandemic or otherwise) and the current Government has reiterated that it welcomes productive, sustainable, and inclusive foreign investment. While New Zealand has a general election in 2020 which may result in a change in Government, the other main political party is generally seen as more open to foreign investment than the current governing party. We therefore do not envisage that New Zealand's foreign investment rules will become overly prohibitive or protectionist in the medium to long term.</p>

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