

Foreign Investment Control: Our global capabilities

Your one stop-shop for global foreign investment control procedures

FDI regimes worldwide are in the process of being reformed. The United Nations Council on Trade and Development states that “there is an increasing trend towards tightening investment screening by expanding the scope and depth of screening procedures and the corresponding disclosure obligations of foreign investors.”

In recent years, the surge in foreign takeovers of companies manufacturing key technologies and of strategic infrastructure assets by non-domestic investors has raised concerns globally about the potential impact of these transactions on national security or public order. While globalization is leading to an increasing number of cross-border transactions, one of the main factors drawing regulators' attention is the involvement of more and more state-owned funds, enterprises, conglomerates, and private firms with close government links in such transactions. The global COVID-19 crisis has already begun to increase the intensity of Foreign Direct Investment review procedures. Not only the US, but also several European Union (EU) Member States and the UK, as well as the EU itself, are strengthening their approaches to FDI.

Hogan Lovells navigates clients through the increasing complexity of FDI filings globally. We analyze where an M&A transaction might require FDI filings and where notifications are recommended. We structure deals so that they allow for the quickest way to closing from an FDI perspective, and we prepare and coordinate such filings with our own offices across the world and with a tried and tested network of local partner firms where we do not have local FDI experts. We stand out not only because of our own deep experience with regulatory hurdles, but also because we work seamlessly together with our merger control experts and our corporate practice in multiple jurisdictions. Moreover, we offer clients a network of internal and external public policy experts in major capitals such as DC, Brussels, London, Paris, Berlin, Madrid, Moscow or Beijing.

Representative matters:

- **Dell** on Foreign Investment Control concerning its proposed US\$2bn sale of RSA to a consortium led by Symphony Technology Group, the Ontario Teachers' Pension Plan Board and AlpInvest Partners (more than five parallel FDI reviews in Europe and abroad)
- **Alstom** regarding the FDI reviews concerning the sale of its energy business to General Electric (national and international foreign investment control and merger control, transaction volume EUR 12 billion)
- **Ford** in foreign investment control procedure regarding the sale of Volvo Cars to the Chinese acquirer Geely (transaction volume US\$ 1,8 billion)
- **WSP Global** in the German foreign investment control procedure regarding the acquisition of Parsons Brinckerhoff (transaction volume US\$ 1,3 billion)
- **Lockheed Martin** in the German foreign investment control procedure regarding the acquisition of Beontra, a German provider of transport infrastructure solutions
- **Sasol** on European foreign investment control and merger control aspects of the sale of its 50% stake in a JV to Huntsman
- **VVP Plettenberg**, a specialized German forgings company to Chinese investor Zhejiang Shuanghuan Driveline Machinery (German phase II FDI review)
- **A major Chinese technology group** in an ongoing phase II review by a European government of the closed acquisition of a technology start-up company (negotiation of remedies)
- Represented **KUKA AG** before CFIUS and the U.S. Departments of State and Commerce in connection with Midea Group Co. Ltd.'s US\$5bn acquisition of KUKA.*
- Provided CFIUS advice to **Unisplendour**, a large Chinese technology company, in connection with its contemplated investment in Western Digital Corporation.
- Provided CFIUS advice to a consortium of Chinese private equity investors in connection led by **Redview Capital Partners** and Asia-IO with its acquisition of SourcePhotonics, a U.S. provider of optical components.
- Represented a Chinese investor before CFIUS in connection with the largest proposed Chinese acquisition of a U.S. company at the time.
- Assisted an Asian company in negotiating a security agreement in connection with its acquisition of an internet service provider.
- Represented **NXP Semiconductors N.V.** in connection with the sale of certain assets to a Chinese private equity firm.*
- Represented **JX Nippon** Oil & Gas Exploration Corporation before CFIUS in connection with a carbon capture and CO2-enhanced oil recovery project.
- Secured CFIUS clearance for **Marvell Technology Group** in its US\$6bn acquisition of Cavium, Inc., a U.S. semiconductor company.
- Provided CFIUS advice to **Dell** regarding the sale of its Dell Services business for approximately \$3.05bn to NTT Data.
- Obtained CFIUS clearance for **NTT Com** regarding its acquisition of Secure-24 Intermediate Holdings, Inc., a leading provider of managed services.
- Assisted a leading European supplier of energy and related services in connection with the acquisition of a U.S. electric power provider.
- Assisted a major European telecommunications company negotiate the first network security agreement required in connection with acquisition of a U.S. telecommunications company.
- Represented the seller in the national security review made in connection with a Russian acquisition of a basic materials manufacturing plant in the United States.
- Represented **Linde AG** before CFIUS and the U.S. Department of Defense in connection with its US\$87bn business combination with Praxair Inc.*
- Represented a major foreign pharmaceuticals company before CFIUS on national security matters in connection with a US\$62bn transaction.*
- Assisting a leading Spanish nuclear services group in its acquisition by a Chinese conglomerate.

*Matter handled prior to joining Hogan Lovells

International Trade and Investment: CFIUS

The U.S. government continues to closely scrutinize the impact on U.S. national security of a wide range of foreign investments. Investors seeking to acquire ownership interests in companies in the United States (and a growing number of other countries) must determine whether they are legally obligated to make filings and anticipate and address governmental concerns, particularly if (i) the investor is foreign government-backed or (ii) the targets of their investments (A) are involved in critical technologies, critical infrastructure, or sensitive personal data, (B) have some nexus with the U.S. government, or (C) operate in sensitive sectors, such as telecommunications, biotechnology, data and cyber security, energy, aerospace and defense, artificial intelligence, and robotics. We can assist you in protecting your commercial imperatives while accommodating governmental concerns.

We have a leading practice in the United States with respect to national security reviews, having a deep bench of lawyers with extensive, practical experience handling CFIUS and associated security reviews.

Three key features particularly distinguish our CFIUS practice:

Seasoned Team with Government Experience

Our CFIUS team members include a former Special Assistant to the U.S. President for Trade, Associate Counsel to the U.S. President, U.S. Trade Representative General Counsel, as well as a senior counsel to the Office of the Assistant General Counsel for International Affairs of the Treasury Department, which provides legal advice to the Secretary of the Treasury as Chairperson of CFIUS. Many were engaged in the CFIUS process during their government service, bringing an “insider’s” perspective to our clients’ needs and goals. Our CFIUS team is seasoned, having actively managed all types of CFIUS transactions since the law’s onset in 1988, representing buyers and sellers and the most sensitive countries and industries.

Complementary Regulatory Breadth

We have one of the largest regulatory practices in Washington, permitting us to leverage that expertise in CFIUS cases, which frequently involve highly regulated industries, such as aerospace, defense, telecommunications and energy. For the vast majority of CFIUS cases we have handled, we also have assisted clients in making related regulatory filings with the Departments of Defense (DOD),

State, Energy (DOE), Commerce (DOC), Justice (DOJ), and Homeland Security (DHS), as well as the Federal Communications Commission (FCC).

Deep Government Relations Capability

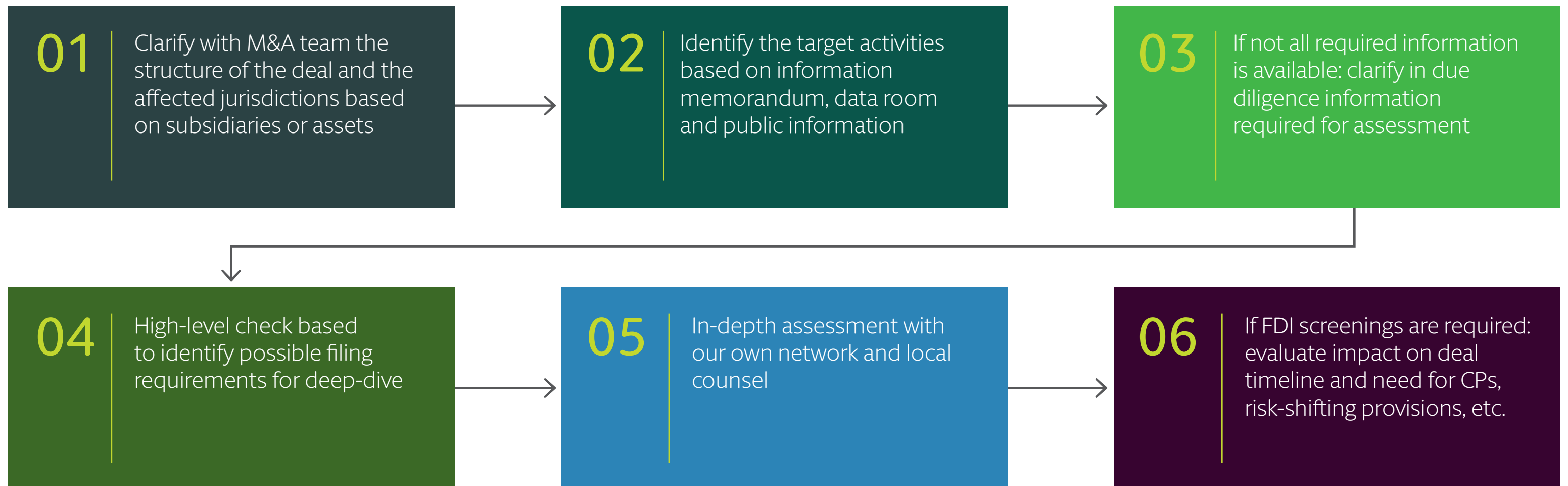
We are one of Washington’s powerhouse government relations law firms, with over 75 professionals who lobby full or part-time. This gives us a unique capability to address executive branch and Congressional objections that may emerge in the most sensitive CFIUS cases. Our team helps develop, calibrate, and execute political/public relations strategies, which can involve executive branch political appointees and many members of Congress.

We have handled CFIUS and other national security reviews, including those conducted by the informal U.S. Government interagency committee known as Team Telecom, involving a wide range of industries, including the defense, telecommunications, and energy sectors, and have represented U.S. and non-U.S. parties, private and governmental, before CFIUS and its constituent agencies. We can also anticipate when a particular transaction may raise political as well as regulatory concerns and are experienced in developing appropriate strategies to address those concerns.

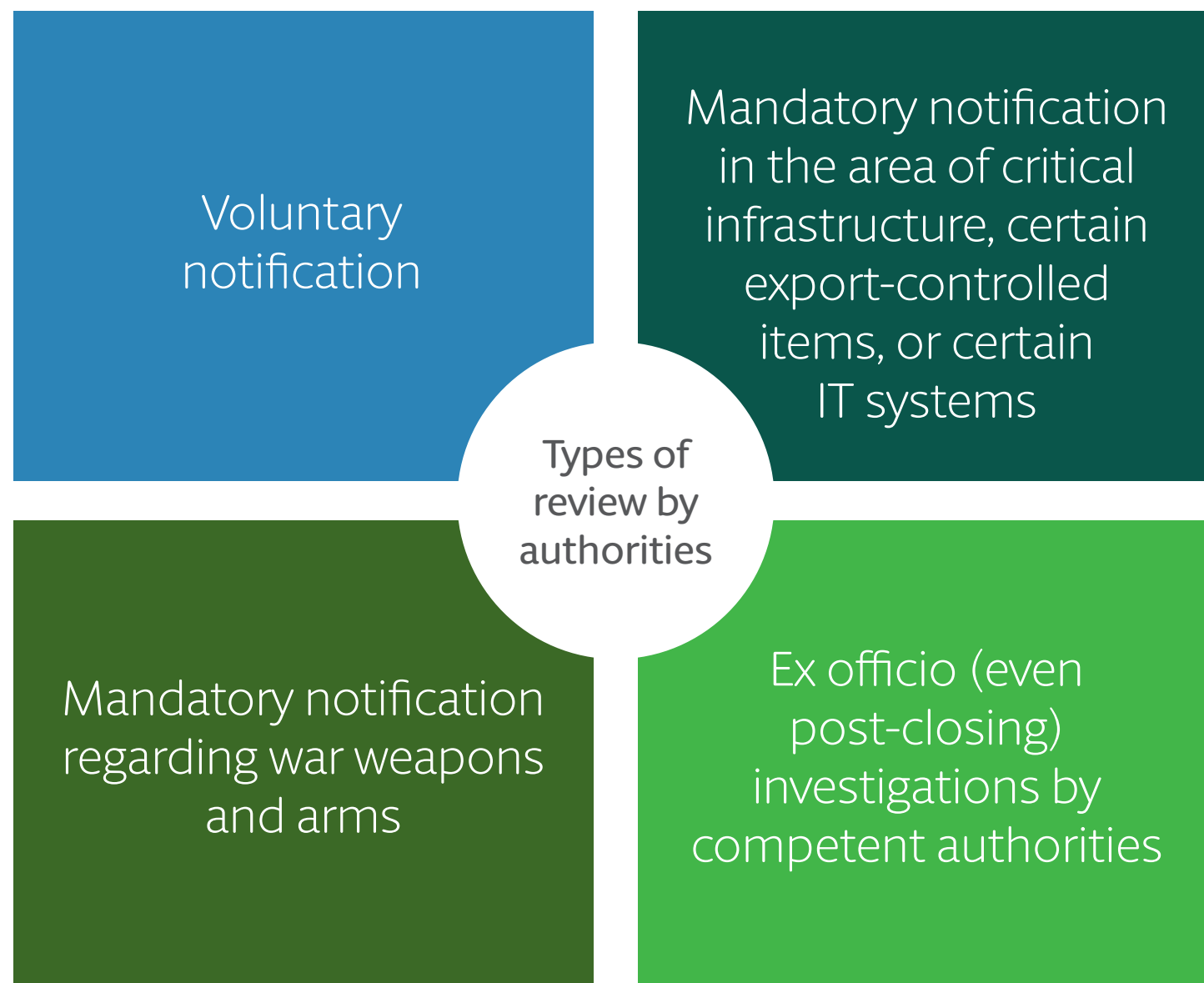


Recommended process for identifying FDI screenings globally

While each transaction has its specific features, our experience is that a selected number of procedural steps is required for most of them. In order to seamlessly integrate our FDI screening process into the M&A process, we usually follow the steps below.



In-depth assessment with our own network and local counsel



Risk Elements

- Political factors in the respective jurisdictions.
- Market valuation of the target company (in local currency).
- List of sensitive activities conducted by the target company (e.g., national security/safety; critical infrastructure; public interest, health).
- Relationship of the target company with local public entities

If FDI screening is required, we deal with the impact on deal timeline and need for CPs, risk-shifting provisions, etc.

M&A Elements

Are there any standstill obligations (i.e., is pre-approval required before closing)?

Can the authorities impose specific obligations as a condition for pre-approval?

Should risk shifting provisions be included in the SPA?

Can the authorities rely on third-party consultations?

Do anti-circumvention provisions apply?

We lead the matter from the M&A driven initial assessment through a regulatory review process to closing

Required or voluntary FDI filings

Increasing EU coordination between Member States

Parallel merger review

Are there merger filings?
Align SPA provisions!

Recent experience from FDI screening procedures

The number of voluntary and mandatory applications as well as of ex officio FDI reviews has recently increased

In addition to the relevant authority / ministry in charge of FDI screenings, **lower level, specialized** agencies and their concerns tend to play an important role, and the need for the coordinating ministry to reconcile with these stakeholders can lead to prolongation of the screening procedures

Opaque procedure: it is often unclear what the substantial issues investigated are and the authority may not share its concerns for confidentiality reasons. It also has a wide margin of discretion how evaluate the substantive concerns.

Lowering of thresholds to levels around 10% brings **VC-type investments and minority** shareholdings into the scope of the FDI reviews

FDI screenings influence structuring of **M&A transactions** already prior to any filing, or even if no filing is required, depending on the interests of the buy- and sell-side

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Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest*
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta*
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Munich
New York
Northern Virginia
Paris
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Riyadh*
Rome
San Francisco
São Paulo
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Shanghai FTZ*
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