How To Approach Rising Foreign Direct Investment Hurdles

By **Joshua Gruenspecht, Seth Cowell and Georgia Cooper-Dervan** (August 14, 2026)

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The global proliferation of foreign direct investment screening regimes — many modeled on, or directly encouraged by, the U.S. — has created a striking transactional irony. U.S. investors themselves now face increasingly intensive regulatory scrutiny in cross-border transactions, including in historically allied jurisdictions.

As recent decisions demonstrate, these reviews may be evolving from largely a procedural formality for U.S. acquirers into a substantive deal risk capable of delaying, conditioning or outright blocking transactions.

Accordingly, attorneys advising on cross-border deals must treat foreign direct investment strategy as a core component of transaction planning from the outset.

Whether through formal regimes or general court action, foreign direct investment reviews have become an outright barrier for a few transactions.

For example, two days after the July 23 announcement that Energy Fuels would pay $1.9 billion for Vacuumschmelze GmbH & Co., a large-scale producer of permanent magnets, it was reported that Germany is expected to impose conditions on the transaction. The news followed a May move by the Dutch government prohibiting U.S.-based Kyndryl's proposed acquisition of Solvinity, a Dutch cloud services provider.[1]

Earlier, in April, it was reported that China's National Development and Reform Commission ordered Meta to unwind its $2 billion acquisition of Manus, an AI-agent startup.[2]

Over the past decade, the number of countries with foreign direct investment screening regimes has more than doubled.[3] What was once a niche, rarely used regulatory tool has become a standard feature of global dealmaking and a routine consideration in cross-border M&A, including in U.S.-to-U.S. transactions that involve the indirect acquisition of foreign subsidiaries or operations.

As jurisdictions continue to strengthen their regimes, parties are seeing more U.S.-led deals encounter longer and more intrusive reviews and increasingly complex conditions of approval.

As foreign direct investment regulators around the world look upon the U.S. with greater suspicion, attorneys advising on cross-border transactions need to take a practical but risk-aware approach to this new transactional environment.

From U.S. Advocacy to U.S. Exposure

The U.S. has long served as a major driving force behind the global proliferation of foreign direct investment screening regimes. The U.S. foreign direct investment regulator — the Committee on Foreign Investment in the United States — has by congressional mandate worked to establish similar regimes in many historically allied nations.

Moreover, the CFIUS rules have served as a significant conceptual blueprint for the EU Cooperation Mechanism, the U.K.'s National Security and Investment Act, as well as other regimes across countries in the Asia-Pacific region. The irony now emerging is that these regimes inspired — or directly requested — by the U.S. are now being deployed against U.S. acquirers.

This is most notably the case in sectors such as artificial intelligence and semiconductor technology, critical minerals and defense. While U.S. investors previously encountered very few regulatory hurdles to their overseas investments, they now face scrutiny even in allied jurisdictions.

These hurdles can create mandatory and suspensory filing obligations and require formal clearance before deals are able to close. Some recent notable examples of some of the more aggressive foreign direct investment regulatory responses to U.S.-led foreign investment can be found below.

Recent Examples

On May 26, the Dutch government prohibited Kyndryl's proposed $113 million acquisition of Dutch cloud services provider, Solvinity. Solvinity provides digital identification infrastructure that Dutch citizens use to access sensitive medical, pension and tax information.

The intervention marks the first time the Dutch telecom investment screening regime has blocked a transaction. Both the U.S. and many other foreign nations — including the Netherlands — incorporate an FDI component into the reviews of foreign ownership transfers in infrastructure sectors like telecommunications.

Although the government did not publish why the acquisition was deemed to be contrary to the public interest, the acquisition attracted substantial media and parliamentary attention over data security, control and continuity risks. In particular, there were concerns that compliance with U.S. laws such as the CLOUD Act could enable U.S. authorities to demand data held by U.S. companies (even on European servers).

Kyndryl publicly criticized the decision as politicized and hypocritical, noting that Kyndryl already handed critical IT work for the Dutch Ministry of Defense. Solvinity and its U.K.-based private equity owner, Vitruvian Partners, challenged the prohibition; however, their petition was ultimately rejected.

On April 27, China's National Development and Reform Commission ordered Meta to unwind its $2 billion acquisition of Manus, an AI-agent startup. The announcement came after four months of regulatory scrutiny by multiple Chinese authorities and, as the ruling was issued post-closing, Meta had already begun the process of onboarding Manus personnel and integrating the company into the Meta group.

One of the most interesting features of this decision was that Manus had relocated its headquarters from China to Singapore in 2025, and yet the NDRC asserted jurisdiction on the basis of the technology's Chinese origin, the nationality of the founders, and the company's historical ties to Chinese data.

In April, a political party in Brazil filed a petition with the Supreme Federal Court seeking to block USA Rare Earth Inc.'s proposed $2.8 billion acquisition of Serra Verde Group, a large-scale rare earths elements producer in Brazil.[4]

The petition argued that the Supreme Federal Court should block the sale on the basis that the rare-earth deposits constitute a strategic national asset and that the sale could undermine Brazilian sovereignty over critical minerals.

As a result of the petition, the court temporarily suspended the sale pending further review. As Brazil does not currently have a foreign direct investment screening regime covering critical minerals, this challenge to the acquisition on foreign direct investment-like grounds is being undertaken via a constitutional lawsuit.[5]

In October 2023, the French Ministry of Economy used its foreign direct investment authorities to veto the proposed $245 million acquisition by U.S.-headquartered Flowserve Corp. of Canadian-headquartered industrial steel valve manufacturer, Velan Inc.[6] Velan had global operations and subsidiaries, including two subsidiaries in France that manufactured critical values for French nuclear-powered submarines and aircraft carriers.

The French government attempted to impose stringent governance and localization remedies such as ring-fenced operations and various commitments on certain sensitive exports. Ultimately, due to the many regulatory and commercial requirements imposed by the French government as conditions for the deal to proceed, Flowserve Corp. abandoned the transaction.

In a sign that this trend is expected to continue, it was reported in July 25 that the German government is expected to impose conditions on U.S. miner Energy Fuels Inc.'s proposed $1.9 billion acquisition of Vacuumschmelze GmbH & Co, or Vac.

Permanent magnet components produced by Vac are used for a variety of purposes, from military-grade communications hardware, sonar, and drones to electric vehicles. A full prohibition of the transaction is not expected, however, onerous conditions may be imposed due to concerns that U.S. ownership of a key European defense supplier may prejudice German industrial and security interests.[7]

Practice Tips

Consider multijurisdictional filing requirements early.

With more than 100 jurisdictions now operating some form of FDI screening regime, many deals trigger mandatory, suspensory filings that must be cleared before closing. Attorneys must assist clients in mapping the target side's activities against sensitive sectors in all relevant jurisdictions — such as artificial intelligence, critical minerals, defense or semiconductors — and bake realistic review timelines into the transaction calendar in order to keep the process predictable and avoid costly delays.

Attorneys should also seek to ensure their FDI assessments are closely aligned and coordinated with other regulatory work streams, such as antitrust and competition, to ensure consistency and harmonization across regulatory submissions both in substance and strategy.

Anticipate conditionality and/or mitigation requirements.

Although total vetoes account for a very small percentage of formally screened cases, clearances subject to conditions or mitigation measures are becoming increasingly common, particularly in jurisdictions such as the European Union.

Mitigation measures span a broad spectrum, but common measures include requirements to maintain local personnel or capabilities, restrictions on the use or transfer of intellectual property, separate IT systems for European operations, the appointment of authorized information technology-security officers, and ongoing reporting obligations, including notice of future disposals.

In cases where transactions relate to operations in sensitive sectors, it is worthwhile to anticipate potential conditions early and engage proactively with regulators. Mitigation can affect bidder selection, deal structuring, risk allocation and, in some cases, the commercial viability of the target's post-acquisition operating model.

Relocations don't insulate companies from regulatory reach.

As evidenced by the recent Meta/Manus case outlined above, a holding company incorporated in another jurisdiction does not provide a regulatory shield if the underlying technology, talent or data can be traced back to a jurisdiction that claims to have regulatory oversight. It is clear that AI and frontier technology companies are increasingly being treated as strategic assets by host countries, and therefore relocations may need to involve more than just legal restructurings. This is particularly important for any deals involving Chinese-origin strategic technology.

U.S. investors are scrutinized source in European foreign direct investment.

Having a U.S. acquirer is no longer a neutral, or automatically reassuring, factor in European foreign direct investment reviews.

The European Commission's Fifth Annual FDI Report covering 2024 revealed that the U.S. was the top foreign investor in the EU in 2024, representing 40% of all cases notified to the EU Cooperation Mechanism. The U.K. accounted for 11% and China accounted for 9%.[8]

These statistics do not mean that U.S. deals are blocked at a higher rate — as clearance without any conditions is granted in approximately 86% of formally screened cases — however, it does mean that U.S. investors are subject to the greatest volume of regulatory scrutiny.

Conclusion

For attorneys representing U.S. investors or purchasers, or target companies receiving investment or being bought by U.S. investors, this shift requires a change in approach.

Screening processes are no longer a box-ticking exercise but rather a key component of deal strategy. Advisers must remain vigilant to evolving regulatory obligations, potential national security risks, and the substantial impact these reviews can have on both deal certainty and closing timelines.

Most crucially, parties must realize that many foreign direct investment regulators may no longer rubber-stamp U.S.-led investments or acquisitions.

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[1] https://www.bloomberg.com/news/articles/2026-07-25/germany-set-to-impose-conditions-on-1-9-billion-us-magnet-deal; https://www.reuters.com/technology/dutch-government-block-takeover-cloud-services-company-solvinity-by-us-based-2026-05-26/; https://www.kyndryl.com/us/en/about-us/news/2026/05/statement-netherlands-solvinity-decision.

[2] https://www.reuters.com/world/asia-pacific/china-blocks-foreign-acquisition-ai-startup-manus-2026-04-27/.

[3] https://unctad.org/publication/world-investment-report-2025.

[4] https://www.bloomberg.com/news/articles/2026-04-25/brazil-party-asks-court-to-halt-rare-earths-miner-s-sale?embedded-checkout=true.

[5] Other jurisdictions, including Canada, Australia, and the UK, have tightened their FDI screening regimes to capture transactions involving critical minerals.

[6] https://ir.flowserve.com/news-events/news-details/2023/Flowserve-Announces-French-Regulatory-Rejection-of-Velan-Transaction-10-05-2023/default.aspx.

[7] https://www.bloomberg.com/news/articles/2026-07-25/germany-set-to-impose-conditions-on-1-9-billion-us-magnet-deal.

[8] https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2025)632&lang=en.