



## **Freedom of Investment Process**

### **IDENTIFICATION OF FOREIGN INVESTORS: A FACT FINDING SURVEY OF INVESTMENT REVIEW PROCEDURES**

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## EXECUTIVE SUMMARY

Governments have both a right and a responsibility to safeguard the essential security interests of their people. Some governments use investment policy measures to pursue this goal. Having reliable information on identity helps recipient countries to bar investments by unwanted investors such as hostile foreign governments, terrorists or organised crime. At the same time, governments need to balance the threats posed by unwanted investors with the objective of not discouraging legitimate investors by unduly burdensome disclosure requirements. This report presents the results of a fact finding survey on how governments seek to establish the identity of foreign investors, with a particular focus on transsectoral, security-related investment reviews.

Eleven countries have trans-sectoral security-related investment reviews (out of more than 40 countries for which information is available). The survey shows that these 11 countries employ a variety of approaches to determining investor identity in the course of such reviews. These variations appear to reflect differing evaluations of the balance of information costs and benefits of generating and analysing such information.

Some countries use “rules of thumb” to eliminate certain categories of incoming investment from consideration by review panels. This significantly reduces the information requirements for the review (including on investor identity) but may open up a loophole for access by unwanted investors. Others require investors themselves to disclose extensive information, including on their own identity. The United States, under the procedures for investment reviews under the Committee on Foreign Investment in the United States (CFIUS), is one example of this. Under CFIUS “voluntary” notification procedures, investors balance the (possibly considerable) costs of preparing a CFIUS notification with the benefits of the legal certainty acquired by a CFIUS finding that the investment does not pose security risks. In effect, the CFIUS “voluntary notification” procedure establishes a public-private partnership for managing security risks posed by investments in which the investors themselves play an active role in calling to CFIUS’s attention investment proposals that are likely to be of interest to it. Other countries (e.g. Germany, under its recently adopted security-related investment reviews) assign, at least initially, the burden of information gathering to the government.

Little information is publicly available on how governments clarify investor identity in the second, more in-depth phase of the review procedure. However, the membership of government bodies on the review panels sheds light on what government information resources are available to the review process. The present report indicates that such membership tends to be quite broad. Thus, the review panels seem to serve a “whole of government” forum in which various government information resources can be used in the context of investment reviews.

The concept of identity used in security related investment reviews is compatible with the concept of “beneficial owners” which is central to the work of the tax and anti-money laundering (AML) authorities. However, the concept of investor identity used for security-related investment reviews is somewhat broader than that of “beneficial owners”. The information sought about investors’ identity in some of the investment reviews surveyed suggests that national security concerns interact with individual identity in many ways. For example, some recipient governments seek information on links with foreign governments, agreements to act in concert and on professional and military experience.

## 1. Introduction

Governments have the right, indeed, the obligation to protect national security. At the same time, they recognise the benefits of openness to foreign investment and of avoiding unnecessarily restrictive investment measures. Since 2006, the “Freedom of Investment” (FOI) process, hosted by the OECD Investment Committee, provides governments a forum for dialogue on how to preserve and expand openness to international investment, while also pursuing other important policy objectives, including protecting national security.

For some of the security risks that can be addressed by investment measures, the challenge of understanding investor identity is crucial since it is needed to understand the nature, intent or motives of the investor. For example, having reliable information on identity helps recipient countries to bar investments by unwanted investors such as hostile foreign governments, terrorists or organised crime. At the same time, governments wish to design such procedures so as not to place an undue disclosure burden on legitimate investors.

This report provides a fact-finding survey on the steps that governments take to determine investor identity in the course of their investment review procedures. It considers only security-related investment reviews or security-related aspects of broader reviews. It responds to the request of participants in FOI Roundtable 11, which met in October 2009 and follows up on a scoping paper on identification of ultimate beneficial ownership prepared for FOI Roundtable 4 – held in March 2007.<sup>1</sup> Box 1 describes the concept of beneficial ownership and its relationship to the broader concept of identity used in security-related investment reviews.

The report is composed of the following sections, each of which proposes issues for discussion.

- Section 2 provides a brief overview of investment review procedures.
- Section 3 looks at how governments manage the costs of information gathering, including information on investor identity, during these procedures.
- Section 4 looks at information obtained on investor identity through three sources (notifications by the investor; information generated within the recipient government; information provided by third parties).

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<sup>1</sup> *“Identification of ultimate beneficial ownership and control of cross-border direct investors.”*  
<http://www.oecd.org/dataoecd/57/8/41481081.pdf>.

### Box 1. “Beneficial ownership” and other concepts of identity

The identification of natural and legal persons is central to the work of many policy communities, including tax enforcement and anti-money laundering (AML). These communities use concepts of identity that suit their policy purposes, and the concept of “beneficial owner” is the most commonly used. This Box examines the meaning of “beneficial owner” in tax and AML contexts and compares it with the concept of investor identity used in security-related investment reviews.

The OECD Model Tax Convention uses, but does not define, the concept of beneficial owner. Its commentary indicates how this term is to be construed in the context of double taxation treaties, where the term designates the legal or natural persons to which particular income streams accrue.<sup>2</sup>

The Financial Action Task Force (FATF), an inter-governmental forum for AML policy making enforcement hosted at the OECD, defines “beneficial owner” as:

“the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.”<sup>3</sup>

The Wolfsberg Group on Anti-Money Laundering, an association of financial institutions, offers this definition:

*The term “beneficial ownership” is conventionally used... to refer to that level of ownership in funds that, as a practical matter, equates with control over such funds or entitlement to such funds. “Control” or “entitlement” in this practical sense is to be distinguished from mere signature authority or mere legal title... The term reflects a recognition that a person in whose name an account is opened with a bank is not necessarily the person who ultimately controls such funds or who is ultimately entitled to such funds.*<sup>4</sup>

The FATF and Wolfsberg definitions of ‘beneficial owner’ contain the notions of ‘entitlement’ to income streams and of ‘effective control’ of the investment. As shown in this survey, security-related investment reviews also seek to determine the “beneficial owner” of an investment. This concern is indicated, in particular, by governments’ collection of information that permits mapping of the structure of entire groups of companies and to determine who exercises ultimate control and on whose behalf a transaction is being made.

Thus, security-related investment reviews use concepts of identity which is compatible with those used by other policy communities. However, the following sections also suggest that some investment reviews adopt concepts of investor identity that go beyond “beneficial ownership”. These concepts encompass attributes of identity that might have a bearing on broader security concerns. Some of the diverse attributes of identity that are looked at in the investment reviews surveyed below include: motivation of the investor, the investors’ broader financial situation, formal and informal agreements to coordinate activities with other economic actors, the nature of relations with other actors (including foreign governments) and the background and experience of company officers and board members (including military experience). Thus, the concept of identity used for security-related investment reviews is somewhat broader than that used by the tax and AML policy communities.

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<sup>2</sup> “OECD Model Tax Convention on Income and Capital, condensed version 17 July 2008”, OECD 2008. <http://www.oecd.org/dataoecd/14/32/41147804.pdf>.

<sup>3</sup> “Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations”, 27 February 2004 (updated as of February 2009), p. 61. <http://www.fatf-gafi.org/dataoecd/16/54/40339628.pdf>.

<sup>4</sup> Wolfsberg FAQ's on Beneficial Ownership [www.wolfsberg-principles.com/faq-ownership.html](http://www.wolfsberg-principles.com/faq-ownership.html).

## 2. An Overview of Security-Related Investment Review Procedures

Surveys of national practice<sup>5</sup> undertaken in support of the FOI process show that countries use their national security plans to manage a wide variety of security risks (e.g. attacks by foreign states or by terrorists, natural disasters, pandemics, infiltration by organised crime). These surveys also show that countries use three broad types of investment measure to address security concerns: outright bans on investment in particular sectors, measures adopted by sectoral regulators (e.g. in telecommunications or air transport) and transsectoral review procedures.

However, the extent of countries' use of investment policy measures to safeguard national security varies markedly:<sup>6</sup>

- Some countries (for example, Belgium, Czech Republic, Hungary, Iceland, Ireland, Italy and the Netherlands) do not have any investment measures related to “public order and essential security considerations.”
- Other countries have narrowly defined restrictions designed to protect public order and essential security interests (e.g. Spain and most Nordic countries have partial restrictions in a narrow range of defence industries, while Egypt restricts inward investment in defence and radioactive material).
- Ten countries, from among the approximately 50 countries that have participated in the FOI process, have investment reviews that are used to address security concerns. The 11 countries are Australia, Canada, People's Republic of China (PRC), France, Germany, Japan, Korea, Mexico, New Zealand, Russia and the United States.<sup>7</sup> Table 1 provides an overview of the institutional characteristics of these countries' review procedures.

## 3. Managing information costs of investment review procedures

One of the challenges of designing such security related investment review procedures is to choose, from among many thousands of foreign investment projects taking place in most economies in any economy in any given year, which projects should be subjected to scrutiny for security risks. Reviewing all of them would be prohibitively costly in terms of the government resources expended on the review procedure and in terms of costs imposed on legitimate investors. On the other hand, even small investments can pose security risks (e.g. an investment located near a defence or infrastructure facility). Therefore, the costs for governments and investors of additional information collection regarding these risks need to be balanced with the benefits of additional information. Countries do this in a variety of ways.

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<sup>5</sup> See, for example, Section IV of the report prepared for FOI Roundtable 10 (March 2009): “*Security-Related Terms in International Investment Law and in National Security Strategies*”. <http://www.oecd.org/dataoecd/50/33/42701587.pdf>.

<sup>6</sup> For the countries that have adhered to the *OECD Declaration on International Investment and Multinational Enterprises*, security-related investment policy information is available in the “List of Measures Reported for Transparency” under sections A.I (Measures based on public order and essential security considerations) of country notifications. <http://www.oecd.org/dataoecd/57/46/38273182.pdf>.

<sup>7</sup> Some review procedures focus only on security issues, while, others combine security with other considerations. An example of the latter is the Australia's Foreign Investment Review Board, which is mandated to review investments in order to determine whether or not they are “contrary to the national interest”, a concept which includes security interests. Canada has two parallel review procedures: one uses a “net benefit” criterion, while the second determines whether there are reasonable grounds to believe that the investment could be “injurious to national security.” Still other countries have investment reviews that focus only on security issues (e.g. France, Germany and the United States).

Some use “rules of thumb” in the design of their review procedures. These reduce *inter alia* the procedures’ information needs by exonerating from review whole classes of investments that are deemed to pose little or no security risk. In addition to making it easier for investors to understand whether their investment is covered by the investment review mechanism, these rules economise on information costs for both recipient governments and investors; however, they may also allow risky investments to proceed without review. Two such rules of thumb are (see Table 1 for more information):

- *Sectoral lists.* Seven countries automatically exonerate from review investments in sectors falling outside a pre-specified list of sensitive sectors.
- *Size thresholds.* Nine countries establish size thresholds for reviewing eligibility. These usually are based on value of investment or degree of ownership or control. Investments falling under these thresholds are considered to pose sufficiently low security risks as to not justify the direct and indirect costs of reviewing.

The United States uses neither of these “rules of thumb” in reviews by the Committee on Foreign Investment in the United States (CFIUS).<sup>8</sup> Instead, it is the investors themselves that, for the most part, control the flow of cases to CFIUS. In effect, investment proposals are (almost always) called to the attention of the CFIUS procedure through voluntary notifications by investors.<sup>9</sup> In effect, the CFIUS procedure establishes a kind of “public-private” partnership for identifying potential investment-related security threats. Under the incentives created by this procedure, investors balance the costs of notifying and the risks of not notifying (which will depend *inter alia* on the nature of the project and the investor). The details of these “voluntary notifications” are provided in section 4.a. below; the information contained in this section would seem to suggest that the costs of making a voluntary notification to CFIUS are quite high. Balanced against these costs would be the benefits of making a voluntary notification and, more precisely, the legal certainty the investor enjoys once CFIUS has issued a finding that the investment proposal does not present security risks.

Some countries manage the cost burden by assigning most or all of it to the government, at least for the initial phases. Germany’s recently adopted transsectoral security review is an example of this. In others (Japan and China) it is up to the investor to “pre-notify” the fact that it is considering making an investment that is subject to the review authority’s scrutiny.

#### **4. Sources of information to identify investors**

An earlier OECD study of beneficial ownership categorised the methods used for obtaining such information.<sup>10</sup> These include:

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<sup>8</sup> Under CFIUS rules, investments representing 10% or less of a company’s voting securities are exempt from CFIUS review if effective control is not gained or intended. However, the analysis of when effective control is gained is on a case-by-case basis. Source: Section 800.203(d) of Department of the Treasury. Office of Investment Security. *Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons; Final Rule.* November 21, 2008.

<sup>9</sup> More rarely, if one of the government bodies participating in CFIUS has security concerns about an investment they can raise a concern (in which case, the investor is likely to be asked by CFIUS to file a voluntary notification). Source: U.S. Government Accountability Office, GAO-05-686, Enhancements to the Implementation of Exon-Florio Could Strengthen the Law's Effectiveness<sub>9</sub> (September 2005). Pages 8 and 9.

<sup>10</sup> Based on *Beyond the Corporate Veil: Using Corporate Entities for Illicit Purposes.* OECD 2001, p. 9.

- primary reliance on up-front disclosure by the party to the transaction (e.g. the investor) to the authorities;
- primary reliance on an investigative system (that is, using government information sources and information gathering powers).

The use of these sources of information in the context of security related investment reviews is described in sections 4.a. and 4.b. below.

#### **4.a. *Investor disclosure to authorities – information relating to investor identity***

All 11 countries with security-related investment reviews require that investors contribute information at some point in the process.<sup>11</sup> In all cases, required information disclosure includes information on investor identity, but the nature and extent of this information varies and the timing (when in the review procedure) such information is to be provided.

Table 2 documents the requirements for disclosure relating to investor identities that are part of the first phase of the investment review procedure (determining whether an investment should be subjected to more in depth scrutiny in a subsequent phase). Here are some examples:

- Australia asks for information on major activities and locations of investors, major subsidiaries and associated companies; financial information; details of ownership, including identity and nationality of ultimate or beneficial owners. Investments by foreign governments or their agencies or by companies in which 15% or more owned by a foreign government are required to be notified to the Foreign Investment Review Board.
- Japan asks for name and contact information of natural or legal persons making the investment. It also asks for the reasons for making the investment and possibly other items to be specified by the Ministry competent in reviewing the matter.
- Mexico asks for the name, domicile, and date of incorporation for legal persons and for the name nationality and immigrant status, if applicable, the domicile of the foreign investors abroad or in the country and the percentage of their interest.
- Russia requests for information relevant for investor identity include the investor's main business activities; the business grouping of which the investor is a member; any agreements on concerted actions to which the investor is party; a document describing persons that exercise control over the investor and the attributes of this control.

This list suggests that countries differ in their requirements for information disclosure on investor identity in the first phase of investment reviews. These differences may reflect different strategies for vetting investment proposals (some countries may prefer to pre-filter security risks based on a small amount of information and then subsequently ask for much more information for projects that seem to pose the highest security risks). Moreover, the differences may reflect different views on how high up-front information disclosure costs can be set without creating too strong a disincentive to invest for legitimate investors.

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<sup>11</sup> Under Germany's Foreign Trade and Payments Act, the initial notification requirement pertains only to the narrow security review involving armaments and cryptology technology. The more general review procedure assigns the burden of initial information gathering to the government.

In comparison with other countries' review procedures, CFIUS notifications involve extensive disclosure at the early phases of the review process.<sup>12</sup> CFIUS has the authority, before or after the closing of a transaction, to initiate a review. CFIUS rules also provide for civil penalties for material errors or omissions in a notification. Thus, it can be assumed that investors making a "voluntary notification" to CFIUS generally invest large amounts of money in making a high-quality notification (however, these costs may not be net costs since such information might be necessary for other purposes as well). It can also be assumed that any investor having a high security risk project and seeking to hide his or her identity would be reluctant to engage in such a process – thus, the CFIUS' extensive up-front notification requirements probably play a deterrence role, in addition to their informational role.

Such extensive notifications might not suit the needs of all countries (and some countries' procedures may give rise to comparable amounts of information disclosure, in later phases of the investment review). Nevertheless, it is worth describing at some length the CFIUS notification requirements because they provide, in a transparent way, a carefully considered, comprehensive model of how investor identity relates to national security concerns.

The nature of the information that CFIUS requires from investors suggests that the procedure seeks to establish a portrait of investor identity that is both comprehensive and detailed. It includes not just the investor's name and contact information but also detailed information about business groups, business partners (including formal and informal business arrangements), relations with the US and foreign governments of the persons involved in the transaction, joint venture arrangements, the backgrounds of the people running the business (executives and governing bodies), directly or indirectly.

CFIUS requirements related to investor identity include (see United States entry in Table 2 for more detail):

- *Name, nationality or place of incorporation* of the investing entity.
- *A complete mapping of the business group – direct and indirect investors.* The name and contacts of the investor's immediate parent, its ultimate parent and all intermediate parents; information about the line of business of the investor and the ultimate parent. Business identifier information for all direct and indirect investors. An organizational chart depicting these relationships.
- *Joint ventures.* In the case of the establishment of a joint venture in which one or more of the parties is contributing to a U.S. business, the voluntary notice is to describe the name and address of the joint venture and the entities that are establishing it.
- *Annual reports.* The most recent annual report of the investor that is party to the transaction, its immediate parent and each entity of which the foreign person is a parent.
- *Agreements to act in concert.* Any formal or informal arrangements to act in concert on matters affecting the US business and involving the foreign persons that hold an ownership interest in the foreign person that is party to the transaction.
- *Other business partners,* including all the financial service providers that are involved in the transaction in an advisory, underwriting or financing role.

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<sup>12</sup> This comparison of the United States with other countries refers only to the initial phases of the review. Under other countries' review procedures companies are asked to provide more detailed information at later phases of the review.

- *Governing body and officers of the corporation.* Information (e.g. curriculum vitae, personal identification information, passport numbers, history of military service) for each member of the board of directors or similar body (including external directors) and corporate officers (including president, senior vice president, executive vice president, and other persons performing equivalent duties) of the acquiring investor and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of 5% or more in the acquiring investor and in the investor's ultimate parent.
- *Foreign government control.* The investor must disclose whether it is controlled or acting on behalf of a foreign government. Specific information on the nature of this relationship, when it exists, is also to be notified (e.g. direct control, contingent instrument that might confer control; relevant rights or powers that could be conferred on governments through golden shares, shareholder agreements, contract, statute or regulation).
- *Previous contacts with CFIUS.* If any party to the transaction has been a party to a mitigation agreement (if so, the investor specifies the date and purpose of such agreement or condition and the United States Government signatories) and whether any party to the transaction has been a party to a transaction previously notified to the Committee.
- *Other dealings with the US government.* The investor must provide information on any filings with, or reports to, agencies of the United States Government that have been or will be made with respect to the transaction prior to its closing.

#### **4.b. Using government information resources to identify investors**

Three governments take some or all of the burden of gathering information in the first phase of the review procedure – that is, they gather some or all of the information used to decide whether a company should be subjected to a more in-depth security-related investigation. The following information was found about these information gathering practices:

- Germany is the most notable of these: it uses information provided by the Federal Cartel Office when this authority receives notification of sensitive acquisitions and by the Federal Financial Supervisory Authority upon the issuance of a takeover offer or the acquisition of 'control' pursuant to the German Takeover Act.
- In Canada, the law enforcement and intelligence service agencies provide necessary information and analysis, possibly complemented by information provided by the investor to the non-security related (net benefit test) part of the review procedure.
- CFIUS members are empowered to initiate a review on their own before or after an investment transaction has taken place. As noted earlier, however, in practice in such cases, the investor is asked to file a notification with CFIUS.

The second phase of review processes involves in-depth investigations of those investment proposals that have been identified, during the first phase, as raising security-related concerns. Not surprisingly, governments publish little information about the sources and kinds of information they use in this phase of the review. As a consequence, it is not generally possible to know what kind of information about investor identity is generated and used in this part of the procedure.

What is known is which government agencies are involved in the second phase consideration of investment proposals. This sheds light on the type of information and expertise that is brought to bear on

the problem. Table 3 lists the government bodies that participate in the investment review procedures. As a general rule, the membership of the review panels is broad. Indeed, in many countries, the membership of the investment review panels seems to reflect a desire to draw on the diverse information resources on a “whole of government” basis. Examples include:

- Nineteen qualified government bodies participate in Canada’s security-related investment review: Departments of Industry; of Canadian Heritage; of Public Safety and Emergency Preparedness; Canadian Security Intelligence Service; the Royal Canadian Mounted Police; Canada Border Services Agency; Communications Security Establishment; Departments of National Defense; of National Defense; of Foreign Affairs and International Trade; of Justice; of Natural Resources; of Transport; Canada Revenue Agency; Privy Council Office; Department of Public Works and Government Services; Public Health Agency of Canada; Departments of Health; of Citizenship and Immigration; Department of Finance; and all provincial, regional and municipal police forces.
- Korea’s investment review commission is headed by the Minister of Finance and Economy and includes 12 other ministers: Foreign Affairs and Trade, Government Administration and Home Affairs, Science and Technology, Culture and Tourism, Agriculture and Forestry, Commerce, Industry and Energy, Information and Communication, Environment, Labour, Construction and Transportation, Maritime Affairs and Fisheries, Planning and Budget;

**Table 1. National Security Review Procedures: An Overview of Institutional Characteristics**

<b>Country</b>	<b>Relevant laws</b>	<b>Review Body</b>	<b>Sectoral List</b>	<b>Size Threshold</b>	<b>Criteria used in review (original language)</b>
<b>Australia</b>	Foreign Acquisitions and Takeovers Act (last amended 2008)	Foreign Investment Review Board, under the National Treasurer	No (except in US-Australia Free trade agreement)	Non-residential land, residential real estate, urban land corporations, trust estates, direct investment by foreign governments: no threshold US investors: sensitive sectors: USD 219 million; non sensitive USD 953 million Non-US investors: USD 219 million except non-residential commercial real estate (USD 5 million, or USD 50 million if not listed).	Contrary to national interest
<b>Canada</b>	Investment Canada Act (last amended 2009)	Industry Canada or Canadian heritage	No	No threshold for national security reviews.	An investment is reviewable if the Industry Minister, after consultation with the Minister of Public Safety and Emergency Preparedness, considers that the investment could be injurious to national security and the Governor in Council, on the recommendation of the Minister, makes an order within the prescribed period for the review of the investment.
<b>P.R. China</b>	Regulation on the acquisition of Domestic enterprises by Foreign Investors (2006). Catalogues for guiding foreign investment projects (2006).	National council (>USD 500 million), National Development and Reform Commission, Ministry of Commerce (national or local, depending on investment size) and competent industrial agency (depending on investment sector)	Yes	Acquisition of actual controlling rights.	Investment has or may have an influence on the state security or cause the transfer of the actual right on the domestic enterprise owning famous trademark or having a name of long history. If a person concerned fails to submit a report, and its merger or acquisition does cause or may cause serious influence on the state economic security.

Country	Relevant laws	Review Body	Sectoral List	Size Threshold	Criteria used in review (original language)
<b>France</b>	Code monétaire et financier (art L151-3, R151-1, R151-3, R153-2, R152-5), and Décret n° 2005-1739 of 30 December 2005	Minister of Economy and Finance	Yes	33% (non EC investor) or 50% (EC investor) acquisition of voting rights, shares, or <i>de facto</i> control	Contrary to public order, public security and national defence interest (sectors)
<b>Germany</b>	German Foreign Trade and Payments Act (last amended 2009)	Ministry of Economic Affairs	No	Control of more than 25% in German business by entity where 25% or more shares owned by non-EU investor individually or exercised collectively	Contrary to public order and security
<b>Japan</b>	Foreign Exchange and Foreign Trade Act (last amended in 2009) and Cabinet Order No. 261 of October 11, 1980	Minister of Finance and other relevant Ministries responsible for respective sectors	Yes	In principle, 10 per cent and over of shareholdings.	Impair national security, disturb the maintenance of public order or hinder the protection of public safety
<b>Korea</b>	Foreign Investment Promotion Act (last amended 2005) and Presidential Decree No 206464, February 22, 2008	Ministry of Knowledge Education (Korea Trade-Investment Promotion Agency)	Yes	Not in specified sectors, but effective access of control in all other sectors <sup>13</sup>	Threaten the maintenance of national security and public order, [have] harmful effects on public hygiene or the environmental preservation or go against Korean morals and customs
<b>Mexico</b>	Mexico Foreign Investment Law (last amended 2006)	National Commission on Investment	Yes	Acquisition of more than 49% of controlling rights or shares	Contrary to national security
<b>New Zealand</b>	Overseas Investment Act (last amended 2009) and Ministerial Directives under the Act	Overseas Investment Office	No	Acquisition of 25% or augmentation of an already existing 25% in New Zealand asset	Will the investment likely assist in maintaining New Zealand control of strategically important assets or land
<b>Russia</b>	The Law on Procedures of Making Foreign Investments in Business Entities of Strategic Importance to National Defence and the Security of the State (57-FZ of 2008)	Government Commission for Control of Foreign Investment in the Russian Federation	Yes	Thresholds of control apply and depend on the sector and the investor's identity	National security

<sup>13</sup>

Section 5.2 (5) and (6) Enforcement Decree of the FIPA.

Country	Relevant laws	Review Body	Sectoral List	Size Threshold	Criteria used in review (original language)
<b>United States</b>	Foreign Investment and National Security Act (2007), Regulation pertaining to mergers, acquisitions and takeovers by foreign persons (2008).	Committee on Foreign Investment in the United States (CFIUS)	No	No	Credible threat to national security

Source: OECD and various websites: see "References for Tables" at the end of this document.

**Table 2.**

**Table 2. Notification on Investor Identity at Initial Phase of Review Procedure: Published Requirements**

Country	Description
Australia	<p><b>Foreign governments.</b> All direct investments by foreign governments or their agencies irrespective of size are required to be notified for prior approval under the Government's foreign investment policy. This applies whether the investment is made directly or through a company that is owned 15% or more by a foreign Government. Applications must be submitted for: the establishment of any new business activity, regardless of value of investment; acquisitions of real estate of any value; acquisitions of interests in companies or business assets of any amount or value.</p> <p><b>Parties to the proposal.</b> For both the purchaser and target business: name; major activities and locations; major subsidiaries and associated companies; a copy of the latest financial statements, which should include total assets, net tangible assets and pre-tax profits; details of ownership (including identity of ultimate or beneficial owners); and country of ultimate control of purchaser.</p> <p>Reason(s) for the proposal from viewpoints of the vendor, target and purchaser: Brief description of the purchaser's future intentions for the business, including amount of development expenditure proposed (if applicable).</p>
Canada	<p><b>Name and contact information</b> of the investor. (Normally, the investor is the person who is actually making the transaction directly, as opposed to, for example, the parent company of the subsidiary making the transaction).</p> <p><b>Country of origin of the investment.</b> Name and address of the persons or entities that control the investor. Controller of the investor is the controlling shareholder or group of shareholders of the investor.</p> <p><b>Indirect investor.</b> Name and contact information of the person/company that controls the investor.</p> <p><b>WTO or NAFTA investor.</b> Whether the ultimate controller's home country is a WTO member or part of NAFTA.</p>
China	<p>If the business scope, scale, right of using a land of the foreign-invested enterprise established after M &amp; A are subject to the license of other corresponding governmental departments, the relevant license shall be submitted along with the foresaid documents.</p> <p>If the operation is an equity contract, investor disclosure includes the name and status of all shareholders owning more than 5% in foreign investor.</p> <p>If the contract is based on assets, the following content is required by Chinese law:</p> <ol style="list-style-type: none"> <li>(1) A resolution of the property right holders or power mechanism of the domestic enterprise on agreeing with the sale of assets;</li> <li>(2) An asset purchase agreement signed by the foreign-invested enterprise to be established and the domestic enterprise, or by the foreign investor and the domestic enterprise;</li> <li>(3) The notice of the merged and acquired domestic enterprise, certifications of the announced creditors, and statement about whether the creditors have raised any objections.</li> </ol> <p><b>Investor.</b> (i) The investor's identity, registration and credit certification that have been notarized and certified according to law; (ii) The (duplicates) of the business licenses of the merged domestic company and its invested enterprises.</p>
France	<p><b>Investor.</b> Name and address (of) investor (s): if a corporation, it should provide the information identifying individuals or public authorities who ultimately control it; in the case where the investor is a listed company, the administrative declaration or request for authorization must provide the identity of <i>known</i> major shareholders holding more than 5%, the list of members of the Board of Directors and their place of residence. Where the operation is conducted by an investment fund, the identity of the managers of the fund should be provided.</p> <p><b>Subject of business investment.</b> Name, address, extract K bis or SIREN number, specific activity, turnover and result of last financial year.</p> <p><b>Investment project.</b> Capital allocation before and after the transaction being reported, option on the principal balance (if applicable), total amount of the</p>

Country	Description
	transaction. Financial terms of the transaction will indicate whether a transfer of funds from abroad to France or other means of payment were used.
<b>Germany</b>	Not applicable. Under Germany's trans-sectoral review procedure, the government is responsible for information gathering for the first phase of the procedure.
<b>Japan</b>	<p>The name, domicile or residence, nationality and occupation of the person who gives the notification (in the case of juridical persons and other organizations, their name, the location of their principal office, the content of business being operated, stated capital and the name of the representative).</p> <p>The business purpose pertaining to an Inward Direct Investment, etc.</p> <p>The reason for making the Inward Direct Investment, etc.</p> <p>Other matters specified by the ordinance of the competent ministry.</p>
<b>Korea</b>	<p>Proof of foreign nationality.</p> <p>For corporations or organizations: copy of register issued by the government of the country or other authorized institutions, or other documents proving the said corporation or organization's existence in the country of origin.</p> <p>For foreign individuals: National identity card, passport, or other documentation proving his or her nationality, issued by the government of the country of origin, or other authorized institutions.</p>
<b>Mexico</b>	Name, trade or corporate name, domicile, date of incorporation, Name and domicile of legal representative; Name and domicile of persons authorized to hear and receive notices; Name, trade or corporate name, nationality and immigrant status, if applicable, domicile of the foreign investors abroad or in the country and the percentage of their interest; Amount of the capital stock subscribed and paid-in or subscribed and payable.
<b>New Zealand</b>	<p><b>Basic information.</b> If the investor is a legal person, its country of formation, date, Company number and date for registration of the company as an overseas company within the New Zealand Companies Act 1993. A copy of the certificate of incorporation of the Applicant and evidence of its registration as an overseas company in New Zealand.</p> <p><b>Business activities of the investors including whether the investing entity was</b> formed to acquire and then own and operate the. Also whether the investor has other current interests in New Zealand and, if so, what these are.</p> <p><b>Financial Accounts.</b> Copies of the financial accounts of the investor(s).</p> <p><b>Demonstrated financial commitment.</b> The financial commitment shown by the investor to date, and any financial commitment post settlement.</p> <p><b>Persons exercising control over the investor.</b> The following information is required: copies of the relevant pages of the passports for each person; Contact details; Rationale for the Investment (that is, a summary of why the overseas person is proposing to undertake the overseas investment. Such a summary should address the strategy behind the proposed overseas investment and how the proposed overseas investment fits into any other investments made by the overseas person. The directors of the investor's parent company(ies) are also likely to be individuals with control of the investor.</p> <ul style="list-style-type: none"> <li>• Information about business experience and acumen of the investor(s), including curriculum vitae for the investor and each of the individuals exercising control detailing background, qualifications and relevant work experience.</li> <li>• Good character of persons controlling the investment. A statutory declaration as to the good character of investor and of each individual controlling the investor.</li> <li>• Citizenship/Residency. Whether the directors are citizens of New Zealand and whether they currently reside in New Zealand or intend to do so.</li> </ul>

Country	Description
Russia	<p><b>Basic information.</b> If the investor is a legal person, a document confirming official registration of the petitioner in its home state, or another document confirming the fact of its formation; the founding documents of the petitioner.</p> <p><b>Transaction.</b> A draft contract or other agreement revealing the essence of the transaction.</p> <p><b>Investor.</b> (i) A document, drawn up in optional form, with the information about the main activities, in which the petitioner has been involved during two years prior to the date of petitioning, or, if the period of business activities of the petitioner is less than two years, during the period of its business activities (except transactions concluded by a foreign state); (ii) A document with the information about the structure of the group of persons, of which the petitioner is a member, as well as information on petitioner's participation in an agreement or concerted actions, which can affect considerably the activities of a business entity of strategic importance and are related to involvement of such a business entity in the strategic activities (iii) A document containing information about the person that exercises control over the petitioner and the attributes of control over the petitioner, (iv) A draft business-plan for business entity of strategic importance, and (v) A document containing information about the shares (stock) of a business entity of strategic importance that belongs to the petitioner, as well as other circumstances as on the date of petitioning which will result in establishing control of a foreign investor or a group of persons over a business entity of strategic importance if the transaction is concluded.</p>
United States	<p><b>Basic information.</b> The name, US address, Web site address, nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction.</p> <p><b>Business groups – direct and indirect investors.</b> The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of: (A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction; (B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and (C) Where the ultimate parent is a public company, any shareholder with an interest of greater than 5 % in such parent; (vi) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of the person that will ultimately control the U.S. business being acquired.</p> <p><b>Financial service providers.</b> The name of any and all financial institutions involved in the transaction, including as advisors, underwriters, or a source of financing for the transaction.</p> <p><b>Business of direct and indirect investors.</b> The business or businesses of the foreign person and its ultimate parent, as such businesses are described, for example, in annual reports, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses.</p> <p><b>Foreign government control.</b> Whether the foreign person is controlled by or acting on behalf of a foreign government, including as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government; (iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government: (A) Has or controls ownership interests, including convertible voting instruments, of the acquiring foreign person or any parent of the acquiring foreign person, and if so, the nature and amount of any such instruments, and with regard to convertible voting instruments, the terms and timing of their conversion; (B) Has the right or power to appoint any of the principal officers or the members of the board of directors of the foreign person that is a party to the transaction or any parent of that foreign person; (C) Holds any contingent interest (for example, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or (D) Has any other affirmative or negative rights or powers that could be relevant to the Committee's determination of whether the notified transaction is a foreign government controlled transaction, and if there are any such rights or powers, their source (for example, a "golden share," shareholders agreement, contract, statute, or regulation) and the mechanics of their operation.</p> <p><b>Formal and informal agreements to act in concert.</b> Any formal or informal arrangements among foreign persons that hold an ownership interest in the foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the U.S. business that is the subject of the transaction, and provide a copy of any documents that establish those rights or describe those arrangements.</p> <p><b>Governing body and officers of the corporation.</b> For each member of the board of directors or similar body (including external directors) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the</p>

Country	Description
	<p>acquiring foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of 5% or more in the acquiring foreign person engaged in the transaction and in the foreign person's ultimate parent, the following information: (A) A curriculum vitae or similar professional synopsis, provided as part of the main notice, and (B) The following "personal identifier information," which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice: (1) Full name (last, first, middle name); (2) All other names and aliases used; (3) Business address; (4) Country and city of residence; (5) Date of birth; (6) Place of birth; (7) U.S. Social Security number (where applicable); (8) National identity number, including nationality, date and place of issuance, and expiration date (where applicable); (9) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and (10) Dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country.</p> <p><b>Business identifier information for direct and indirect investors.</b> The following "business identifier information" for the immediate, intermediate, and ultimate parents of the foreign person engaged in the transaction, including their main offices and branches: (A) Business name, including all names under which the business is known to be or has been doing business; (B) Business address; (C) Business phone number, fax number, and e-mail address; and (D) Employer identification number or other domestic tax or corporate identification number.</p> <p><b>Other dealings with US government.</b> The voluntary notice shall list any filings with, or reports to, agencies of the United States Government that have been or will be made with respect to the transaction prior to its closing, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.</p> <p><b>Joint ventures.</b> In the case of the establishment of a joint venture in which one or more of the parties is contributing a U.S. business, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made an acquisition of the existing U.S. business that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.</p> <p><b>Financial statements of the investor.</b> Persons filing a voluntary notice shall, with respect to the foreign person that is a party to the transaction, its immediate parent, the U.S. business that is the subject of the transaction, and each entity of which the foreign person is a parent, append to the voluntary notice the most recent annual report of each such entity, in English. Separate reports are not required for any entity whose financial results are included within the consolidated financial results stated in the annual report of any parent of any such entity, unless the transaction involves the acquisition of a U.S. business whose parent is not being acquired, in which case the notice shall include the most recent audited financial statement of the U.S. business that is the subject of the transaction. If a U.S. business does not prepare an annual report and its financial results are not included within the consolidated financial results stated in the annual report of a parent, the filing shall include, if available, the entity's most recent audited financial statement (or, if an audited financial statement is not available, the unaudited financial statement).</p> <p><b>Organisational chart.</b> The voluntary notice shall include: (1) An organizational chart illustrating all of the entities or individuals above the foreign person that is a party to the transaction up to the person or persons having ultimate control of that person, including the percentage of shares held by each; and (2) The opinion of the person regarding whether: (i) It is a foreign person; (ii) It is controlled by a foreign government; and (iii) The transaction has resulted or could result in control of a U.S. business by a foreign person, and the reasons for its view, focusing in particular on any powers (for example, by virtue of a shareholders agreement, contract, statute, or regulation) that the foreign person will have with regard to the U.S. business, and how those powers can or will be exercised.</p> <p><b>Previous contacts with CFIUS.</b> Persons filing a voluntary notice shall include information as to whether: (1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the United States Government signatories; and (2) Any party to the transaction has been a party to a transaction previously notified to the Committee.</p>

Source: OECD and various websites: see "References for Tables" at the end of this document.

**Table 3. Table 3. Membership of Investment Review Bodies**

<b>Country</b>	<b>Membership of Review Body</b>
<b>Australia</b>	Investment specialists from both public and private sector. The Foreign Investment Review Board (FIRB) of the Australian Treasury runs the procedure. The FIRB's Compliance Unit verifies information with other ministries.
<b>Canada</b>	The Investment Canada Act names 19 qualified investigative bodies or classes of investigative bodies: Departments of Industry; of Canadian Heritage; of Public Safety and Emergency Preparedness; Canadian Security Intelligence Service; the Royal Canadian Mounted Police; Canada Border Services Agency; Communications Security Establishment; Departments of National Defense; of National Defense; of Foreign Affairs and International Trade; of Justice; of Natural Resources; of Transport; Canada Revenue Agency; Privy Council Office; Department of Public Works and Government Services; Public Health Agency of Canada; Departments of Health; of Citizenship and Immigration; Department of Finance; and all provincial, regional and municipal police forces.
<b>China</b>	National Council (>500M USD), National development and Reform Commission, Ministry of Commerce (national or local, depending on investment size) + Competent industrial agency (depending on investment sector).
<b>France</b>	Ministries of Economy, Industry and Labour. Verification with other ministers including Defence.
<b>Germany</b>	Administrative staff from the Ministry of Economic Affairs.
<b>Japan</b>	Minister of Economy, Trade and Industry + Ministry competent given the investment sector, upon advice from the Council on Customs, Tariff, Foreign Exchange and other Transactions.
<b>Korea</b>	Commission headed by the Minister of Finance and Economy includes 12 other ministers (Foreign Affairs and Trade, Government Administration and Home Affairs, Science and Technology, Culture and Tourism, Agriculture and Forestry, Commerce, Industry and Energy, Information and Communication, Environment, Labour, Construction and Transportation, Maritime Affairs and Fisheries, Planning and Budget).
<b>Mexico</b>	Commission including Ministers for Internal Affairs, Foreign Affairs, Treasury and Public Credit, Social Welfare, Ecology and Natural Resources, Energy, Economy, Communications and Transport, Work Affairs, and Tourism. The Minister of the Economy presides. The general manager's office for foreign investment (part of the Minister for the Economy) is responsible for investigating breaches to the foreign investment law.
<b>New Zealand</b>	Regulator named by the Minister of Treasury. The Office of Investment Overseas may consult with any person it deems appropriate, including other governmental departments.

Country	Membership of Review Body
<b>Russia</b>	A 16-member commission chaired by the Prime Minister and including several heads of public agencies (e.g. Federal Security Service and the Federal Anti-monopoly Commission).
<b>United States</b>	<p>The Commission for Foreign Investment in the United States (CFIUS) is chaired by The Secretary of the Treasury.</p> <p>Members include the heads of the Departments of Justice, Homeland Security , Commerce, Defence, State, Energy, Office of the U.S. Trade Representative , Office of Science &amp;Technology Policy.</p> <p>As observers: Office of Management &amp; Budget; Council of Economic Advisors; National Security Council; National Economic Council.</p> <p>Homeland Security Council; The Director of National Intelligence and the Secretary of Labor are non-voting, ex-officio members of CFIUS with roles as defined by statute and regulation.</p>

Source: OECD and various websites: see "References for Tables" at the end of this document.

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## **Korea**

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- Reglamento de la ley de inversion extranjera u del registro nacional de inversiones extranjeras, published at the official Gazette of the Federation on 8 September 1998, last amended 4 May 2009.

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### **Peru**

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### **Russia**

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<b>Countries</b>	<b>Agency website</b>
<b>Australia</b>	Foreign Investment Review Board
<b>Canada</b>	Canada Investment Review Division -- Investment Canada Act
<b>China</b>	MOFCOM, Invest in China
<b>France</b>	Minister for Economy, finance and Labor
<b>Germany</b>	Germany Trade and Invest
<b>Japan</b>	Japan external trade organisation
<b>Korea</b>	Invest Korea
<b>Mexico</b>	Direccion general de inversion extranjera
<b>New Zealand</b>	Overseas Investment Office
<b>Russia</b>	Federal Anti-Monopoly Service
<b>United States</b>	Commission on Foreign Investment in the United States