Investment screening is new normal but business interests can still be protected

Many countries have become wary of foreign investments on account of security concerns. This has implications for Singapore firms and investors.

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There was a time, not very long ago, when most nations were chasing foreign direct investments (FDIs) and throwing open their doors to investors. But national security concerns and geopolitical tensions have changed the picture dramatically, and many countries no longer automatically welcome foreign investors without first considering the implications for security and economic resilience.

In the past five years, several advanced economies have implemented new and strengthened measures to subject investments to increased scrutiny in order to protect their national security and economic interests. The European Union Screening Regulation (enacted in 2019) encouraged member states to adopt new FDI regimes to identify national security concerns that could pose a risk to security. As at April 2023, 27 EU member states had FDI regimes, while about 90 per cent of Organization for Economic Co-operation and Development (OECD) member countries have regulations to screen investments.

While investment screening may be a necessary reality in the post-pandemic world, countries must take care to maintain a balance. In Singapore, while protecting their national security, firms and investors, on their part, will need to be prepared to respond to investment screening and be prepared to address any regulatory concerns that may arise in order to continue to attract investments.

The need for investment screening

Investment screening itself is not new. Governments in the United States, United Kingdom and South-east Asia already have for many years, powers to screen foreign investments in sectors deemed to be critical or sensitive. For example, the United Kingdom Investment Screening Act 2020 allows the Secretary of State to screen investments in sectors such as defence, aerospace and nuclear sectors. Within the UK, 60 per cent of notable foreign direct investment screening regulations as early as in 1993, include sectors commonly regulated include energy, public utilities, telecommunications services.

The Covid-19 pandemic has underscored the need to protect critical supply chains and national security. Governments committed to prevent medical supplies, ventilator equipment, personal protective equipment and the export of food and other resources to the face of a pandemic. Organizations must also provide for essential supplies and other supply chain such as pharmaceuticals.

In addition, governments were concerned about undesirable foreign acquisitions of companies in financial fitness bought about by the pandemic. As a result, there was enhanced scrutiny of acquisitions in Germany, France, Italy, Japan and India, while Canada extended further for national security reviews in 2020-2022. While investment screening thresholds were considerably lowered to respond to the pandemic, recent amendments to FDI regimes in most countries are permanent.

Moreover, geopolitical tensions have resulted in more stringent measures to subject investments to increased scrutiny. In Singapore, the government has strengthened measures to subject investments to increased scrutiny, particularly in sectors such as defence, aerospace and nuclear technologies.

Among the jurisdictions that have recently broadened and strengthened FDI review mechanisms are the EU, US, India, Japan, South Korea, Singapore, New Zealand and Australia. The EU’s EUROPAFDI Act broadened the scope of screening to cover all sectors deemed important to national security, imposing thresholds on notifications for investments in sensitive periods as well as triggering mandatory securities for non-compliance.

The Netherlands, which recently enacted new laws on screen investments in sensitive infrastructure and technologies, has also mandated its investment regime and ensures that this could make it less attractive to businesses. Even Ireland, a leading global technology hub, is planning to pass a new law to screen all investment deals of significant impact.

Regulators and governments in the US, UK as well as the EU have been taking steps to screen investments in a wide variety of technologies, including artificial intelligence, robotics and biotechnology.

The need for collaboration and coordination between multiple agencies within the same jurisdiction is a major factor for a less predictable environment for FDI.

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POTENTIAL IMPACT ON INVESTMENT AND BUSINESS

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The more stringent regulatory environment means that Singapore firms planning to make acquisitions overseas should take steps to manage and mitigate the risks from investment screening. Before undertaking a transaction, they should carefully consider the possibility of being flagged for national security risks.