

POLITICAL INTERVENTION IN M&A - IS THE TIDE TURNING?

12 December 2017 | Global
Legal Briefings - By **Alex Kay and Veronica Roberts**

Political intervention in cross-border acquisitions is on the increase globally, against a back-drop of protectionist rhetoric in some countries: the blocking by President Trump of the bid by China-backed Canyon Bridge for Lattice Semiconductor being the latest high-profile example. Jurisdictions traditionally reluctant to intervene on national interest grounds have expanded the scope of their foreign investment regimes and, in some cases, have started to block deals or extract strict conditions for clearance. When planning a deal, foreign direct investment (FDI) regimes need to be considered alongside competition based merger control rules, but governments tend to have much broader discretionary powers to intervene on the FDI front.

The OECD has compiled a Regulatory Restrictiveness Index plotting the scope of FDI regimes in over 60 countries on a sliding scale. This shows that EU countries collectively have the fewest restrictions on FDI. However, the EU has recently announced plans to introduce a framework for its Member States to operate foreign investment regimes on security or public order grounds: Member States will not be obliged to introduce new rules but, if they do, they must follow the broad framework and will also benefit from a co-operation and information sharing arrangement with other Member States and the European Commission. It remains to be seen how this will fare through the EU legislative process, given the sharp disagreements between Member States on this issue.

At the same time we have seen a reverse trend elsewhere. The OECD's Index shows that the biggest reformers in the last 20 years have all been in Asia. Countries such as South Korea, Vietnam and the Philippines have seen a significant inflow of foreign investment at least partly as a result. We continue to see reforms of the traditionally most restrictive regimes: India and China liberalised their FDI rules last year.

Why is it, in this context, that we are seeing traditionally more liberal countries start to flex their interventionist muscles more?

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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