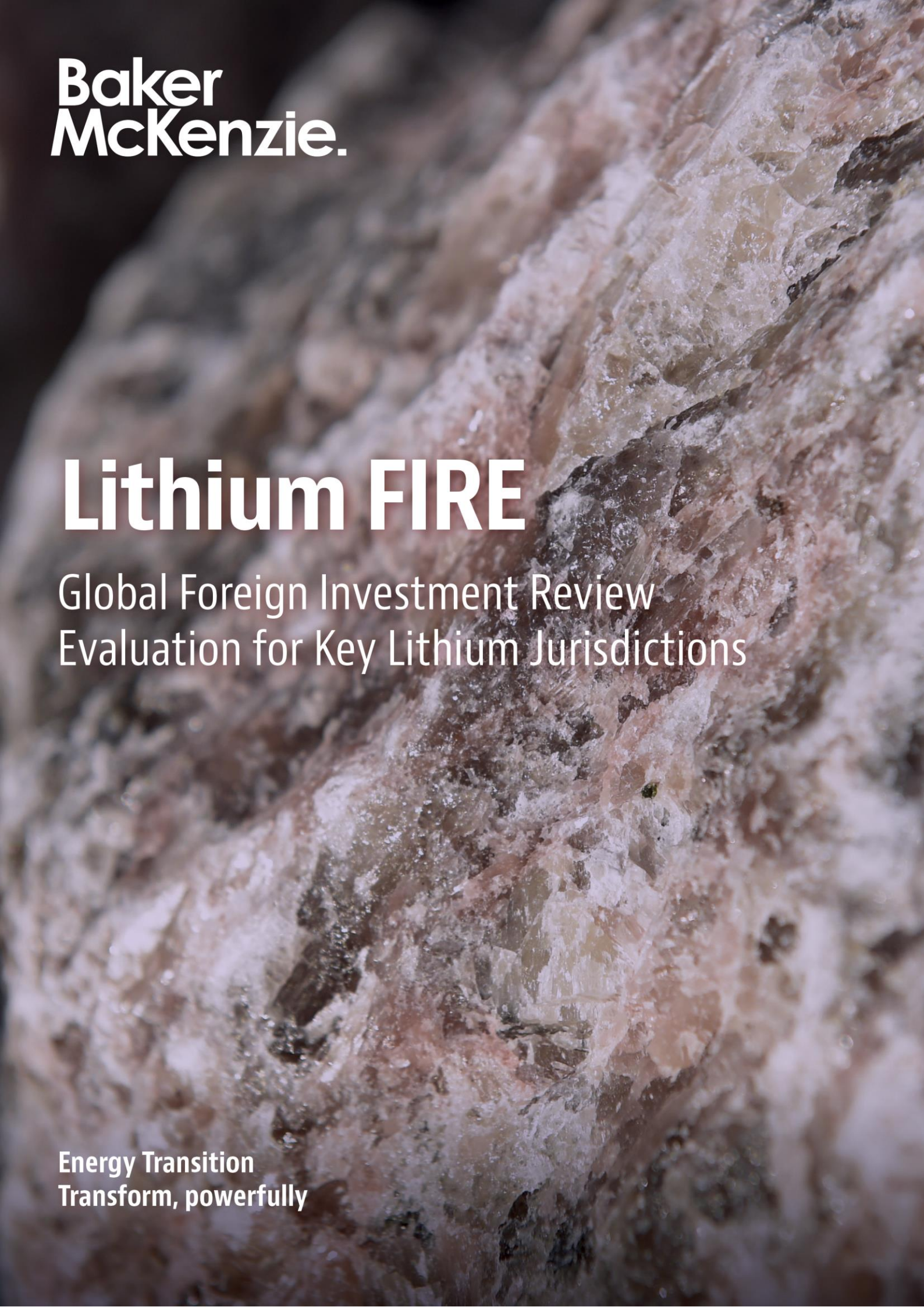

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Lithium FIRE

Global Foreign Investment Review Evaluation for Key Lithium Jurisdictions

Energy Transition
Transform, powerfully

"Critical minerals and metals" has become a term of art in the context of the energy transition. Its legal definition varies across many jurisdictions that are developing regulatory frameworks to secure supply of certain types of minerals and metals critical in the context of their net zero strategies. All of these regulatory frameworks have one common denominator – lithium.

Lithium is an essential component across a number of technologies required to enable a net zero transition, including lithium-ion batteries, electric vehicles and energy storage systems. The demand for lithium has increased exponentially recently. Governments, industrials involved in manufacturing components for the clean energy technologies, and electric vehicle manufacturers (just to name a few) are all competing to secure its supply. As energy security becomes an increasingly important concept, lithium is also playing a key role in the latest geopolitical patterns. New players are entering the mining market, innovative contractual structures are being developed, and unconventional partnerships are being forged - all in the name of securing supply of lithium.

It should be acknowledged that the science never stands still and that alternative battery technologies that do not require lithium are being developed. However, despite these developments many authoritative voices in the energy sector are of the view that lithium is not only here to stay as a critical metal, but also that the current high demand for lithium is expected to rise even further in years to come.

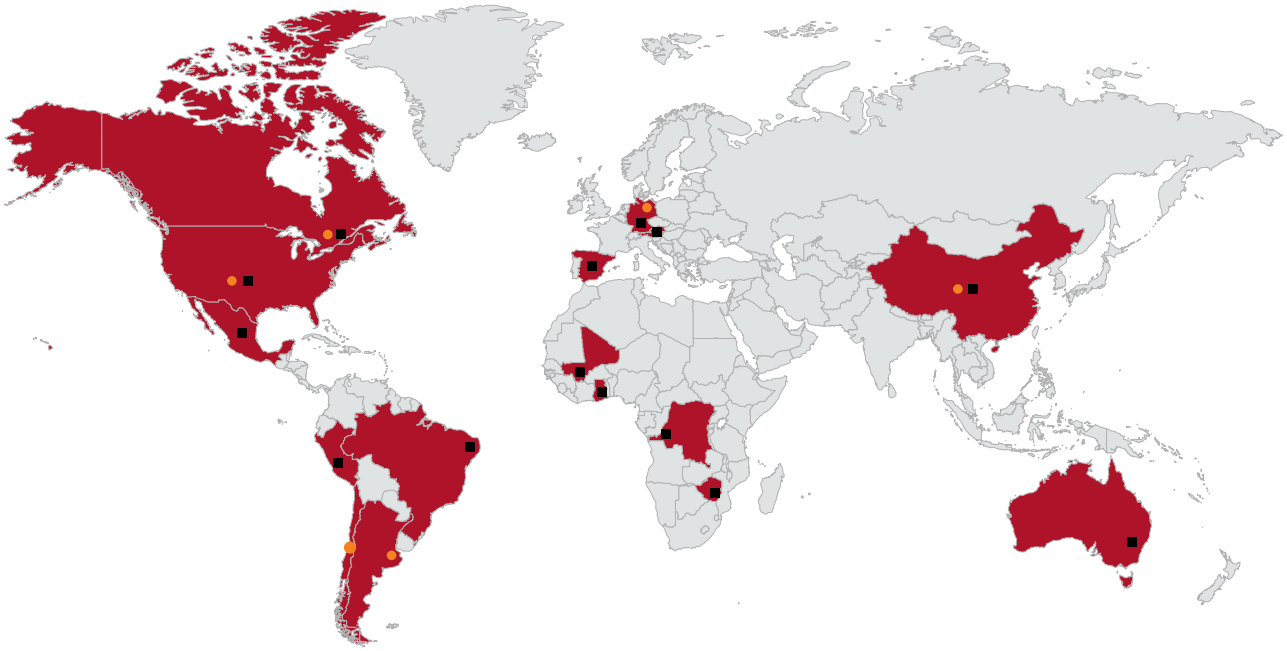
Amid heightened geopolitical tensions, it is not surprising that resource nationalism is a growing trend in the lithium industry and governments around the world are increasingly using foreign investment rules to review lithium transactions, with multiple deals being subject to in-depth scrutiny or even outright prohibition in recent years. Whilst concerns are primarily focussed upon control by state-owned/influenced enterprises, anyone looking to secure supply of lithium needs to be aware of the foreign investment landscape across the countries fortunate to have significant lithium reserves. This report sets out an overview and analysis of recent foreign investment review developments with a focus on lithium.

Baker McKenzie has a deep history in delivering solutions to the global mining industry in both traditional and newer markets. Launched more than 60 years ago, we have developed into one of the world's strongest mining law teams, specializing in international exploration and mining projects, and metals and mining M&A, across six continents. We act for and understand the needs of explorers, mining companies, investors, traders, financiers and the other key stakeholders in the full life cycle of mining projects. Our clients include six of the top 10 global listed mining companies by market capitalization. We have a presence in more of the key mining jurisdictions globally than any of our competitors, with dedicated, full service transactional teams in the key mining hubs of London, Toronto, Johannesburg and Australia, and established teams of leading, locally trained lawyers in those newer markets where our clients have pursued opportunities, such as Central Asia, Africa and South America. Our lawyers, including our 100+ foreign investment specialists across the world, are fully conversant with the complex issues that arise in cross-border assignments, both in mitigating risks and developing solutions that meet the business and regulatory needs of our clients.

Baker McKenzie is also at the forefront of energy transition and the impact this is having on the mining sector, advising clients with respect to matters such as the demand for new battery metals, the shift in energy supply away from traditional carbon sources and the effect of the transition on traditional energy metals (such as copper and aluminium).

Website address: Mining & Metals | Expertise | Baker McKenzie

February 2024



■ Primarily rock

● Primarily brine

Jurisdictions	Lithium Resources*	Jurisdictions	Lithium Resources*
Argentina	20 million tons	Germany	3.2 million tons
Australia	7.9 million tons	Ghana	180,000 tons
Austria	60,000 tons	Mali	840,000 tons
Brazil	730,000 tons	Mexico	1.7 million tons
Canada	2.9 million tons	Peru	880,000 tons
Chile	11 million tons	Spain	320,000 tons
China	6.8 million tons	United States of America	12 million tons
Democratic Republic of Congo	3 million tons	Zimbabwe	690,000 tons

*Source: Identified lithium resources as per the US Geological Survey, Mineral Commodity Summaries, January 2023

* The content in relation to all African jurisdictions have been written by the firms named in the relevant sections.

** Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law.

*** Baker & McKenzie FenXun (FTZ) Joint Operation Office is a joint operation between Baker & McKenzie LLP, an Illinois limited liability partnership, and FenXun Partners, a Chinese law firm. The Joint Operation has been approved by the Shanghai Justice Bureau.

Jurisdictions

Argentina

Is there a foreign investment screening procedure in this jurisdiction which may apply to lithium investments?

No, there is no foreign investment screening national law in Argentina. There are sector-specific foreign investment legislation/licensing regimes for the acquisition of real estate, more specifically rural land and real estate located within a security area, which may be prohibited or may need prior approval (Rural Land Law) or may need prior approval (security law for land in areas bordering neighboring countries).

In Argentina, mining resources (including lithium) do not belong to the surface owners, but to the provinces that grant companies or individuals the right to explore and exploit the subsoil and own the production subject to the payment of a royalty.

These laws may affect mining investments in lithium only if companies want to buy the surface area which is not common since in most lithium areas (salars) the surface land is fiscal land. The legal basis is the Rural Land Law 26,737, which was passed, and later implemented by, Decree No. 274/12 as amended by Decree No. 820/16 ("**Rural Land Law**"). The Rural Land Law applies to all foreign individuals (with some exceptions) and to all legal entities (whether or not organized in Argentina) in which a foreigner has control (meaning any type of control). There is an assumption that there is control if a foreigner, directly or indirectly, holds more than 51% of the equity or decision-making powers.

The Rural Land Law states the following:

- Only 15% of the Argentine rural land may be owned by foreigners.
- Foreigners (individuals or legal entities) of the same nationality may not own more than 30% of the percentage mentioned above.
- A single foreign owner cannot own more than 1,000 hectares in the so-called core area of Argentina (agricultural area) or in the mining provinces a significantly larger area that depends on each province.
- Foreigners cannot buy rural land if the land is bordering or contain certain permanent water reservoirs.

According to the available information, current foreign ownership of rural lands is significantly lower than 15%, and no single nationality owns a figure close to 30% of the above-mentioned 15%. Finally, the core area is mainly located in the central part of the country.

In relation to real estate located in security areas (Decree/Law 15,385 and Law 23,554), these are mainly areas located along the border, either terrestrial or maritime, and are considered important for the country's defense.

The identity of the person — as the purchaser — is important because the requirements vary if the party involved is:

- an Argentine citizen;
- nationalized citizens (an additional distinction should be made if they come from a bordering country);
- foreign citizens, whether or not coming from a bordering country; or
- legal entities, depending on whether they are organized in Argentina or abroad, and whether their shareholders and the majority of the votes belong to a foreign legal entity or person.

The domicile of the legal entity and the formation of its board are also important. In these cases, one is required to complete and file a preliminary authorization as a condition to be able to proceed. To do this, several forms should be completed. The forms request general information on the person or entity purchasing the piece of land, a description of the piece of land itself and the activity to be developed. In addition, for a legal entity, an investment plan should be filed.

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Australia

1. Is there a foreign investment screening procedure in this jurisdiction which may apply to lithium investments?

Yes, however no screening procedure specifically applies to the lithium sector. Foreign investors seeking to invest in the Australian lithium sector may nevertheless find themselves subject to mandatory Foreign Investment Review Board (FIRB) approval requirements on other grounds. Under the current FIRB regime (as set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and accompanying regulations), there is no stand-alone "critical minerals" category in terms of the mandatory FIRB approval triggers. The relevance of lithium being classed as a "critical mineral" is explained in the response to question 17 below.

2. If a foreign investment screening procedure is in place, who is the reviewing agency or decision-maker?

The Commonwealth treasurer, who acts on the advice of the FIRB, is the reviewing agency or decision-maker. Applicants will generally only deal with the FIRB.

3. What types of transactions or events can trigger the application of the screening rules in your regime and are there any particularities that may apply in relation to these triggers (e.g., if a particular percentage share increment is relevant, the meaning of a relevant asset/business transfer in this jurisdiction that may trigger a filing)? Question 4 deals with triggers that are not listed here.

a. Direct majority share transfer (in a domestic entity)

b. Indirect majority share transfer

c. Direct minority share transfer (in a domestic entity):

Acquisition of at least 20% of the securities in an Australian entity will typically trigger consideration of whether FIRB approval is required, although where a foreign government investor will acquire 10% of an entity, FIRB approval will be required. In some cases, acquisition of less than a 10% interest will require approval. Once the thresholds are reached, any additional acquisition of interests is caught.

d. Indirect minority share transfer:

Acquisition of at least 20% of the securities in an Australian entity will typically trigger consideration of whether FIRB approval is required, although where a foreign government investor will acquire 10% of an entity, FIRB approval will be required. In some cases, acquisition of less than a 10% interest will require approval. Once the thresholds are reached, any additional acquisition of interests is caught.

e. Asset/business transfer involving domestic assets/business:

Pure domestic transfers without foreign acquirers are not caught.

f. Real estate transactions (e.g., land purchases)

g. Purely internal restructurings/reorganizations (i.e., where there is no change in ultimate control)

h. Establishment of a full-functional JV (without contribution of assets)

i. Establishment of a non-full-functional JV (without contribution of assets)

j. A transfer or sale of existing intellectual property rights

k. Different to the above, i.e., there are other transaction types or circumstances that trigger a filing

4. If the triggering transactions or events were not listed under question 3 above, and other triggers, different from the above apply, what other transaction types or events will trigger a foreign investment review filing in this jurisdiction?

Foreign investors seeking to invest in the Australian lithium sector may find themselves subject to mandatory FIRB approval requirements in situations other than those listed above. These circumstances include, but are not limited to, when:

- A foreign investor proposes to acquire an interest in a mining or production tenement if the relevant monetary threshold is met. The monetary thresholds are AUD 0 for "foreign government investors", AUD 0 for private investors (except those from Chile, New Zealand, or the United States), and AUD 1,427 million for private investors from Chile, New Zealand or the United States. An AUD 0 monetary threshold means no monetary threshold applies, that is, it is subject to mandatory FIRB approval;

- Regardless of the monetary thresholds, a foreign investor proposes to acquire an interest in a mining, production or exploration tenement, and that tenement is considered to be "national security land"; and

- A foreign government investor proposes to acquire an interest in an exploration tenement.

In addition, entering into an agreement under which senior officers of an entity are obliged to act in accordance with the instructions of a foreign person who holds a substantial interest (generally 20%) in an entity or entering into or terminating a "significant agreement" with an Australian business may also trigger the treasurer's jurisdiction.

A "significant agreement" is an agreement with an Australian business that relates to either of the following:

- The leasing, letting or hiring of, or the granting of other rights to use, assets of the business

- The participation by a person in the profits or central management and control of the business (This limb is particularly broad and may capture certain types of investment management agreements.)

5. Is it necessary for the Target to have any presence in this jurisdiction?

Yes.

6. If it is necessary for the Target to have any presence in this jurisdiction, what would the establishment threshold(s) (e.g., a representative/sales office, branch, or stand-alone subsidiary) be?

A stand-alone subsidiary or foreign entity operates the Australian business or holds interest in Australian assets.

7. Are there any notification thresholds that trigger foreign investment review screening, other than the transactions or events noted in questions 3 or 4 above?

Whilst not all forms of foreign investment in the Australian lithium sector are caught by the mandatory FIRB approval rules, such investments may still be considered a "reviewable national security action" under the Foreign Acquisitions and Takeovers Act 1975 (Cth). This means that, although not mandatory, if it is not notified and approved, the investment can at any time before, and within 10 years after, completion be called in and unwound by the Treasurer on national security grounds. FIRB guidance notes that foreign persons proposing to undertake a "reviewable national security action" by investing in a business or entity involved in the extraction, processing or sale of lithium (amongst other "critical minerals") are encouraged to seek FIRB approval. Note that voluntary notification will not, extinguish the treasurer's ability to use the "last resort" power.

8. If there are value thresholds that would trigger foreign investment review screening (e.g., turnover thresholds; market share; asset value thresholds), please advise, who the undertakings concerned would be (i.e., who are the relevant parties for meeting the value thresholds) in an acquisition (e.g., (i) acquirer's group and (ii) the target only; (i) acquirer's group and (ii) the seller plus target; (i) acquirer's group; (ii) target; (iii) the seller separately)?

The target.

9. Is the foreign investment review filing obligation voluntary or mandatory in this jurisdiction (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction, event or sector involved, please specify accordingly and note how it varies, i.e., in which type(s) of transaction, event or sector(s) this would vary.

There are both voluntary and mandatory FIRB filing obligations that may arise from foreign investment in the Australian lithium sector (depending on the specific circumstances).

10. Is a foreign investment review filing suspensory (i.e., approval must be obtained prior to closing) in this jurisdiction? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

N/A. For mandatory filings, or if an application is submitted in relation to voluntary filings, approval should be obtained prior to closing. If the investor chooses to not make a voluntary notification, then it is possible to close without approval, but they run the risk of the transaction being "unwound" during the treasurer's call-in period, if the treasurer considers that the transaction is contrary to the national interest. See also the response to question 7 regarding "reviewable national security actions".

11. Which party is responsible for preparing and submitting the foreign investment review filing?

The direct investor is responsible for preparing and submitting the filing.

12. What is the deadline to notify a foreign investment transaction in this jurisdiction?

There is no specific deadline for the notification of the transaction to the FIRB. However, when a mandatory filing/clearance requirement applies, the transaction cannot close without having been cleared by the FIRB. An investor cannot execute a transaction document in respect of a transaction that constitutes a notifiable action unless completion is conditional on obtaining the FIRB's approval (unless approval has already been obtained).

13. What are the statutory deadlines within which the authority must take a decision on a foreign investment review filing in this jurisdiction? Please indicate if there are different deadlines for a first phase review and a second or "in-depth" review phase (or any other applicable review period(s), such as a pre-review period). Please specify calendar days or working days.

From payment of the application fee, the treasurer has 30 calendar days to decide and a further 10 calendar days to notify the applicant. An applicant can request that the timeframe be extended. This commonly occurs where the FIRB indicates that it requires further time to assess an application and asks that the applicant consider requesting an extension. In this situation, it is common for an applicant to agree to an

extension to avoid the treasurer having to make an interim order. The treasurer may make an interim order (which is published (i.e., the fact that the application was made is made public)), which has the effect of granting the treasurer an additional 90 days to make a final decision.

14. Is there a filing fee for a foreign investment review filing in this jurisdiction? If yes, by when do filing fees have to be paid (e.g., paid pre-filing, post-decision, or at another time)?

Yes. The fees are based on transaction value bands. The fees have to be paid prefiling.

15. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance in this jurisdiction?

The penalties are potential divestment, significant fines (these differ based on whether the breach is by a corporation or an individual) and potential imprisonment.

16. Which undertakings and/or individuals can be held liable for failure to notify?

The acquirer, the seller and their advisers who assisted the breach can be held liable. Officers and directors of an entity that breaches the law can also be liable for accessorial liability in limited circumstances.

17. What is the focus of the foreign investment review screening in this jurisdiction, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The foreign investment review screening focuses on the national interest, and relevant factors when assessing national interest include national security, competition (both in terms of domestic and global supply of goods or services), other Australian government policies (including tax), impact on the economy and community, and character of the investor, including their level of transparency, corporate governance practices and compliance with laws. Lithium, due to its uses, scarcity and geographical concentration, is considered more sensitive than other minerals and is commonly referred to in Australia as a "critical mineral" and is considered as such within the context of national security by FIRB. While investments involving "critical minerals" are subject to the same screening thresholds as all other minerals, they are generally subject to closer scrutiny in the FIRB screening process. As such, under FIRB guidance, voluntary notification of a "reviewable national security action" is encouraged for foreign persons proposing to invest in a business or entity involved in the extraction, processing or sale of lithium.

18. What are the possible outcomes of the foreign investment review screening procedure in this jurisdiction?

The following outcomes are possible:

- Approval
- Rejection (uncommon)
- Withdrawal of application
- Approval can be subject to conditions

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Austria

1. Is there a foreign investment screening procedure which may apply to lithium investments?

Yes, lithium qualifies as a critical raw material and therefore constitutes a sensitive sector according to Annex part 2 lit 3.2 of the Austrian Investment Control Act (ICA).

2. If a foreign investment screening procedure is in place, who is the reviewing agency or decision-maker?

The Austrian Ministry for Labor and Economy (Bundesministerium für Arbeit und Wirtschaft (BMAW)) is the reviewing agency or decision-maker.

3. What types of transactions or events can trigger the application of the screening rules in your regime and are there any particularities that may apply in relation to these triggers (e.g., if a particular percentage share increment is relevant, the meaning of a relevant asset/business transfer in this jurisdiction that may trigger a filing). Question 4 deals with triggers that are not listed here.

a. Direct majority share transfer (in a domestic entity):

A direct (or indirect) acquisition of an Austrian undertaking can trigger the application of the Austrian foreign investment control screening rules. This is also the case for a direct (or indirect) acquisition of voting rights of 50% or more in an Austrian undertaking.

b. Indirect majority share transfer:

An indirect acquisition of an Austrian undertaking can trigger the application of the Austrian foreign investment control screening rules. This is also the case for an indirect acquisition of voting rights of 50% or more in an Austrian undertaking.

c. Direct minority share transfer (in a domestic entity):

A direct (or indirect) acquisition of voting rights of at least 25% (or 50%) in an Austrian undertaking can trigger the application of the Austrian foreign investment control screening rules. In some particularly sensitive sectors as defined by the law (e.g., defense products and technology, critical energy, digital infrastructure or water), a lower threshold of 10% of the voting rights applies in addition to the thresholds mentioned above. In these particularly sensitive sectors, an acquisition of 10% of the voting rights in an Austrian undertaking can trigger a filing requirement in Austria.

d. Indirect minority share transfer:

An indirect acquisition of voting rights of at least 25% (or 50%) in an Austrian undertaking can trigger the application of the Austrian foreign investment control screening rules. In some particularly sensitive sectors as defined by the law (e.g., defense products and technology, critical energy, digital infrastructure or water), a lower threshold of 10% of the voting rights applies in addition to the thresholds mentioned above. In these particularly sensitive sectors, an acquisition of 10% of the voting rights in an Austrian undertaking can trigger a filing requirement in Austria.

e. Asset/business transfer involving domestic assets/business:

A (direct or indirect) acquisition of significant assets of an Austrian undertaking can trigger a filing requirement in Austria.

f. Real estate transactions (e.g., land purchases):

This depends on whether the real estate would be considered to be a significant asset of an Austrian undertaking. In general, it can be assumed that this is the case. It is strongly recommended to consult with local counsel in such cases.

g. Purely internal restructurings/reorganizations (i.e., where there is no change in ultimate control):

In addition, purely internal restructurings/reorganizations can trigger a filing requirement in Austria, if the other requirements are fulfilled (i.e., involvement of a foreign undertaking and the Austrian undertaking is active in a sensitive or particularly sensitive sector). It is strongly recommended to consult with local counsel if an Austrian undertaking is involved in an internal restructuring.

h. A transfer or sale of existing intellectual property rights:

This depends on whether the existing intellectual property rights would be considered to be a significant asset of an Austrian undertaking. In general, it can be assumed that this is the case. It is strongly recommended to consult with local counsel in such cases.

i. The grant of an exclusive license of intellectual property rights:

This depends on whether the exclusive license of intellectual property rights would be considered to be a significant asset of an Austrian undertaking. In general, it can be assumed that this is the case. It is strongly recommended to consult with local counsel in such cases.

j. The grant of a nonexclusive license of intellectual property rights:

This depends on whether the nonexclusive license of intellectual property rights would be considered to be a significant asset of an Austrian undertaking. While there are arguments that a nonexclusive license might not trigger a filing requirement, there has not yet been any advice or case law provided by the authority. It is strongly recommended to consult with local counsel in such cases.

4. If the triggering transactions or events were not listed under question 3 above, and other triggers, different to the above apply, what other transaction types or events will trigger a foreign investment review filing in this jurisdiction?

A (direct or indirect) acquisition of controlling influence over an Austrian undertaking can trigger a filing obligation in Austria.

5. Is it necessary for the Target to have any presence in this jurisdiction?

Yes.

6. If it is necessary for the Target to have any presence in this jurisdiction, what would the establishment threshold(s) (e.g., a representative/sales office, branch, or stand-alone subsidiary) be?

The relevant element is that an Austrian target company (i.e., company seated or headquartered in Austria) is subject to the investment (e.g., the acquisition of voting rights or control in the Austrian target undertaking, or of significant assets of the Austrian target undertaking).

7. Are there any notification thresholds that trigger foreign investment review screening, other than the transactions or events noted in questions 3 or 4 above?

No. There is an exemption from the screening for investments in micro-undertakings that had fewer than 10 employees and an annual turnover or annual balance sheet total below EUR 2 million in the last two completed financial years prior to the transaction.

8. If there are value thresholds that would trigger foreign investment review screening (e.g., turnover thresholds; market share; asset value thresholds), please advise, who the undertakings concerned would be (i.e., who are the relevant parties for meeting the value thresholds) in an acquisition (e.g., (i) acquirer's group and (ii) the target only; (i) acquirer's group and (ii) the seller plus target; (i) acquirer's group; (ii) target; (iii) the seller separately)?

The target and other, only relevant for the for micro-enterprise exemption. Only relevant for micro-enterprise exemption.

9. Is the foreign investment review filing obligation voluntary or mandatory in this jurisdiction (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction, event or sector involved, please specify accordingly and note how it varies, i.e., in which type(s) of transaction, event or sector(s) this would vary.

There is a mandatory filing obligation in Austria.

Implementing a notifiable transaction without approval may be sanctioned with imprisonment for up to three years for deliberate acts or up to six months or fines for negligent acts.

The responsible corporate entities may face fines of up to EUR 850,000 for deliberate acts or EUR 400,000 for negligent acts.

In addition, the transaction would be considered null and void. Where an authorization requirement arises, the transaction would de jure be considered to be concluded under the condition precedent that an authorization will be given.

The primary responsibility to notify the transaction rests with the buyer. However, the Austrian target company has an obligation to notify the proposed transaction if the buyer fails to notify. If the Austrian target company fails to comply with this (secondary) notification obligation, it may be sanctioned with imprisonment for up to six weeks or with a fine of up to EUR 40,000.

10. Is a foreign investment review filing suspensory (i.e., approval must be obtained prior to closing) in this jurisdiction? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

Yes. This is not entirely clear yet. However, there are good reasons to conclude that the suspensory effect is national and, therefore, ring-fencing is possible. Please note that nothing about the Austrian target company may change, including any changes of the indirect shareholders. It is strongly recommended to consult with local counsel in such cases.

11. Which party is responsible for preparing and submitting the foreign investment review filing?

The primary responsibility to notify the transaction rests with the buyer. However, the Austrian target company has an obligation to notify the proposed transaction if the buyer fails to notify. If the Austrian target company fails to comply with this (secondary) notification obligation, it may be sanctioned with imprisonment for up to six weeks or with a fine of up to EUR 40,000.

The Law on Investment Control primarily obliges the buyer to notify the transaction. The authority will inform the Austrian target company about a notification that has been filed by the buyer. If the Austrian target company is aware about a proposed transaction that requires approval and had not received any information

about a notification of this transaction, it is obliged to immediately notify the proposed transaction to the authority.

12. What is the deadline to notify a foreign investment transaction in this jurisdiction?

The transaction should be notified to the BMAW immediately after the signing of the transaction. The authority does not clearly indicate what "immediately" means and will assess this on a case-by-case basis. For reference, a filing after approximately five business days after signing has not been an issue in the past. An earlier application even before the signing of the contract is possible if there is at least a binding declaration of intent to conclude the planned transaction.

13. What are the statutory deadlines within which the authority must take a decision on a foreign investment review filing in this jurisdiction? Please indicate if there are different deadlines for a first phase review and a second or "in-depth" review phase (or any other applicable review period(s), such as a pre-review period). Please specify calendar days or working days.

The review process in Austria usually takes approximately 2.5 months as of submission. Please see below for more detail.

The FIR process in Austria consists of the EU coordination mechanism and the national process:

Phase 1 review of the Austrian regulator (BMAW) takes up to one month, but this period will only start once the (preceding) EU cooperation mechanism procedure is completed. Within a few days after submission of the FDI filing to the BMAW, the regulator will initiate the EU cooperation mechanism. The EU cooperation mechanism procedure involves a 35-calendar day period for comments by EU member states or the European Commission, and, if one or more EU member states have made comments within this period, a further five calendar days for comments by the European Commission.

Once the EU cooperation mechanism is completed, the BMAW's Phase 1 review starts and the national process takes up to one month. As the EU cooperation mechanism is initiated within a few days after submission of the filing to the BMAW, it is not possible to precisely indicate upfront when the entire process is completed, but in total Phase 1 in Austria (including EU cooperation) takes approximately 2.5 months.

Besides, if the BMAW considers that an in-depth analysis of the proposed transaction with regard to its potential impact on the national security or public order is required, it may also decide to open a Phase 2 procedure (taking up to two months after the decision on its opening has been served).

14. Is there a filing fee for a foreign investment review filing in this jurisdiction? If yes, by when do filing fees have to be paid (e.g., paid pre-filing, post-decision, or at another time)?

Yes. While there is no filing fee per se, the authority recently started to collect fees for submissions. The filing fees must be paid post-decision.

15. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance in this jurisdiction?

Implementing a notifiable transaction without approval may be sanctioned with imprisonment for up to three years for deliberate acts or up to six months or fines for negligent acts.

The responsible corporate entities may face fines of up to EUR 850,000 for deliberate acts or EUR 400,000 for negligent acts.

In addition, the transaction would be considered null and void. Where an authorization requirement arises, the transaction would de jure be considered to be concluded under the condition precedent that an authorization will be given.

16. Which undertakings and/or individuals can be held liable for failure to notify?

The primary responsibility to notify the transaction rests with the buyer.

However, the Austrian target company has an obligation to notify the proposed transaction if the buyer fails to notify. If the Austrian target company fails to comply with this (secondary) notification obligation, it may be sanctioned with imprisonment for up to six weeks or with a fine of up to EUR 40,000.

Individuals can be fined. We are not aware of any such decisions. Note, however, that criminal law decisions are generally only published if they are rendered by the Austrian Supreme Court (Oberster Gerichtshof).

17. What is the focus of the foreign investment review screening in this jurisdiction, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The assessment focuses on whether a transaction is likely to affect public security or public order within the meaning of Articles 52 and 65 of the Treaty on the Functioning of the European Union.

The Law on Investment Control states in particular that the authority has to consider: (i) whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding; (ii) whether the foreign investor or a natural person acting in a managing function for the foreign investor is or has previously been involved in activities that have or had an impact on the security or public order in another EU member state; and (iii) whether there is a substantial risk that the foreign investor or a natural person acting in a managing function for the foreign investor is or has been involved in illegal or criminal activities. Other relevant national security or public order concerns could be the risk of shortages of supply or data safety concerns.

18. What are the possible outcomes of the foreign investment review screening procedure in this jurisdiction?

The authority can approve or prohibit the transaction, or approve it subject to conditions.

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Brazil

1. Is there a foreign investment screening procedure which may apply to lithium investments?

In Brazil there is no general national law in place providing for screening of foreign investments, but there are sector-specific foreign investment legislation/licensing regimes in respect of certain sectors.

In respect to lithium investments, the general restrictions applicable to the mining sector will apply. Mining activities in Brazil may only be carried out through authorizations and/or concessions granted by the Federal Government to either: (a) Brazilian citizens; or (b) companies with head offices and management in Brazil (regardless of the nationality of the shareholders, save very few exceptions). Therefore, it is possible for foreign companies to invest in mining activities in Brazil by incorporating a Brazilian subsidiary or investing in existing Brazilian companies.

However, mining companies operating within a frontier zone (an area within 150 kilometres of Brazil's border with other countries) must have at least the majority of the corporate capital belonging to Brazilian citizens, a majority of the members of the management of such companies must be Brazilian citizens who shall have predominant management powers over the company, as well as 2/3 of Brazilian employees.

Furthermore, pursuant to the Brazilian Constitution, the exploration and production of nuclear minerals and its derivatives on Brazilian territory may only be carried out by state-owned companies.

In addition, the following requirements apply to foreign investors in Brazil:

a. Acquisition or rental of rural property

Pursuant to the Federal Constitution, Law No. 5,709/1971 governed by Decree No. 74,695/74 there are certain limitations for foreign entity authorized to operate in Brazil, foreign-controlled Brazilian entities and foreign individuals residing in Brazil to acquire or lease rural land.

Foreign entity authorized to operate in Brazil or the foreign-controlled Brazilian may only acquire or lease rural property intended for the implementation of agricultural, livestock, forestry, industrial, tourist or colonization projects and provided that in connection with its corporate purposes.

Purchase or lease of rural land must have prior authorization by the Brazilian Institute for Rural Settlement and Agrarian Reform (*Instituto Nacional de Colonização e Reforma Agrária* - INCRA) and by the relevant ministry or agency within the Federal Government for the analysis of the intended exploitation project.

In case the footage of the rural property exceeds 100 indefinite exploitation modules (or *módulos de exploração indefinida* - MEI), which size vary on the location of the rural property, authorization from the National Congress will be required, pursuant to article 23 of Law No. 8,629/1993. Other authorizations will be necessary if the rural property is located in the so-called border strip (*faixa de fronteira*), as defined by Law No. 6,634/79 and Decree No. 85,064/80 or areas considered indispensable to national security, which will depend on the authorization of the General Office of the National Security Council (*Conselho de Defesa Nacional*).

In addition, other restrictions applicable to individuals and legal entities include the following:

- The total rural land areas owned by foreign entities authorized to operate in Brazil or foreign-controlled Brazilian entities cannot exceed 25% of the surface land area of the municipality.

- Foreign nationals of the same nationality cannot be owners, in each municipality, of more than 40% of the surface land area of a municipality.

Acquisition or lease of rural properties by foreign entities or foreign-controlled Brazilian entities are deemed null and void if concluded without the obtainment of the necessary applicable authorizations.

b. Registration — Foreign Capital in Brazil

In certain cases, external credit operations and foreign direct investments are required to be registered with the Brazilian Central Bank.

Such registration must be carried out by the recipients of foreign capital with the SCE-Crédito and SCE-IED e-registration tools, which are part of the Brazilian Central Bank's computerized information system (SISBACEN). However, the nonresident must register with the CDNR e-registration tool (which is a system provided by the Brazilian Central Bank for declaring certain non-resident's information).

For external credit operations, information must be provided (both for funds entering into Brazil or being kept abroad) in the following situations:

- Direct loans, issuance of securities on the international market, issuance of private placement securities on the Brazilian market and financing, whenever the value of the foreign credit operation is equal to or greater than USD 1 million
- Financed imports of goods or services with a payment term of more than 180 days, whenever the value of the foreign credit operation is equal to or greater than USD 500,000
- Advance receipt of exports and foreign financial leasing, with a payment term of more than 360 days, whenever the value of the foreign credit operation is equal to or greater than USD 1 million

For foreign direct investment, information must be provided in the following cases:

- There is a financial transfer related to a non-resident investor of an amount equal to or greater than USD 100,000
- There is a movement resulting from foreign direct investment (e.g., conversion into investment of rights redeemable abroad, corporate reorganization, distribution of profits and dividends, payment of interest on equity, return of capital and net assets resulting from liquidation, etc.) of an amount equal to or greater than USD 100,000
- On the base dates of the quarterly, annual and five-year statements, for recipients of foreign direct investment subject to such statements

2. If the response to question 1 is yes, who is the reviewing agency or decision-maker?

There is no special authority responsible for control over foreign investments in Brazil. When prior authorization, communication or registration is necessary, the following authorities are responsible:

a. Brazilian National Mining Agency (*Agência Nacional de Mineração*) for granting of mining rights and regulating the mining sector

b. Brazilian Defense Council (*Conselho de Defesa Nacional*): cases concerning the exploitation of the frontier zone

c. Brazilian Central Bank: operations involving external credit operations and foreign direct investments

d. INCRA: acquisition or rental of rural property (the authority may also be the National Congress depending on the area)

3. What types of transactions or events can trigger the application of the screening rules in your regime?

All transactions/events described below (among others) may trigger the need for authorization, communication and/or registration before the Brazilian Central Bank, considering foreign capital in Brazil (please refer to question 1 for more details).

- direct majority share transfer (in a domestic entity)
- indirect majority share transfer
- direct minority share transfer (in a domestic entity)
- indirect minority share transfer
- asset/business transfer involving domestic assets / business
- asset/business transfer not involving any domestic assets / business
- real estate transactions (e.g., land purchases)
- purely internal restructurings/reorganizations (i.e., where there is no change in ultimate control)
- establishment of a full-functional JV (without contribution of assets)
- establishment of a non-full-functional JV (without contribution of assets)
- a transfer or sale of existing intellectual property rights
- the grant of an exclusive license of intellectual property rights
- the grant of a non-exclusive license of intellectual property rights

4. Please specify any particularities that may apply in relation to the above (e.g., if a particular % share increment is relevant, the meaning of a relevant asset/business transfer in your jurisdiction that may trigger a filing). Please also add any other transaction types or circumstances that will trigger a foreign investment review filing in your jurisdiction.

Please see question 1.

5. Is it necessary for the Target to have any presence in your jurisdiction?

Please see question 1. Mining rights can only be granted to (a) Brazilian citizens; or (b) companies with head offices and management in Brazil (regardless of the nationality of the shareholders, save very few exceptions). Therefore, it is possible for foreign companies to invest in mining activities in Brazil by incorporating a Brazilian subsidiary or investing in existing Brazilian companies.

6. Are there any notification thresholds for screening beyond the trigger events noted above? If the criterion is that the deal falls within a certain sector please state that this is the case.

As for the carrying out of mining activities, exploitation of the frontier zone and acquisition or rental of rental property, there are no established thresholds (it is only necessary that the deal falls within the sector).

Please refer to question 1 for more details.

7. If there are value thresholds, please advise for an acquisition, who are the undertakings concerned (i.e., relevant parties for meeting the value thresholds) for an acquisition (e.g., (i) acquirer's group and (ii) target only; (i) acquirer's group and (ii) seller plus target; (i) acquirer's group; (ii) target; (iii) seller separately)?

From a banking regulatory perspective, the thresholds may be related to the value of the credit external operation/direct foreign investment. Please refer to question 1 for more details.

For mining activities, exploitation of frontier zone and acquisition or rental of rural property: N/A

8. Isa filing obligation voluntary or mandatory in this jurisdiction (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction or sector involved, please specify accordingly.

a. From a banking regulatory perspective, all filing obligations related to the approval, communication and registration processes are mandatory. Please refer to question 1 for more details.

b. The exploitation of the frontier zone and the acquisition or rental of rural property are subject to prior authorization from the governmental authorities.

9. Is filing suspensory (i.e., approval must be obtained prior to closing)? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

Yes. From a banking regulatory standpoint and for the exploitation of the frontier zone and the acquisition or rental of rural property, the suspensory effect is national.

10. Which party is responsible for preparing and submitting the filing?

From a banking regulatory standpoint, the target or the receiver of the foreign investment will be responsible for the communication or registration processes. Please refer to question 1 for more details.

For the exploitation of the frontier zone and the acquisition or rental of rural property, the applicable laws indicate that the filing will be made by the foreign interested party.

11. What is the deadline to notify?

a. In case of registration of foreign direct investment, the filing of the relevant documents must be made before the first financial transfer related to such investment. For new financial movements related to the foreign direct investment, these must be reported to the Brazilian Central Bank within 30 days of their occurrence. Finally, certain recipients of foreign direct investment are also subject to quarterly and annual reporting requirements (please refer to question 1).

b. In relation to the registration of foreign credit operations, the identification of the parties and the characterization of the operation must be declared to the Brazilian Central Bank (i) until the funds enter Brazil, or (ii) within 30 days of disbursement, delivery of goods or provision of services, abroad or in Brazil, when the operation is contracted without entry. Information on the payment schedule of the foreign credit operation must be declared within 30 days, as the case may be, after (i) the inflow of currency, (ii) customs clearance, (iii) the provision of services to the Brazilian resident or (iv) the disbursement or delivery of goods abroad or in Brazil, in operations without inflow of funds in Brazil. In addition, the following movements related to the foreign credit operation must also be declared within

30 days of their occurrence: (i) shipment of goods abroad; (ii) provision of services to non-residents; (iii) payments and receipts made abroad; (iv) payments and receipts in national currency in nonresident accounts; (v) debt write-off or cancellation; (vi) payments made or obligations incurred in Brazil; and (vii) entry and loss of goods.

c. In relation to exploitation of the frontier zone and the acquisition or rental of rural property it is necessary to obtain prior authorization from the governmental authorities.

12. What are the statutory deadlines within which the authority must take a decision? Please indicate if there are deadlines for a first phase review and a second phase "in-depth" review (or any other applicable review period(s), such as a pre-review period). Please specify calendar days or working days.

For the direct foreign investment the registration is declaratory and there is no decision by the authorities.

For the exploitation of the frontier zone and the acquisition or rental of rural property the applicable laws do not specify statutory deadlines for the authorities.

13. Is there a filing fee? If yes, by when do filing fees have to be paid (e.g., pre-filing, post-decision)?

No.

14. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance?

The Brazilian Central Bank may impose the following penalties for breaches of its administrative rules under its jurisdiction (in the scope of sanctioning administrative proceedings): (i) public admonition; (ii) fine; (iii) prohibition on providing certain services to institutions authorized to operate by the Brazilian Central Bank; (iv) prohibition on carrying out certain activities or operation; (v) disqualification from acting as an executive officer and from holding office in a body provided for in the bylaws or articles of association of institutions authorized to operate by the Brazilian Central Bank; and/or (vi) withdrawal of authorization to operate. The fine cannot exceed the higher of the following amounts: (a) 0.5% of the revenue from services and financial products calculated in the year prior to the offense; or (b) BRL 2 billion. The penalties provided for in items (iii), (iv) and (v) cannot exceed 20 years.

In respect to the exploitation of the frontier zone and the acquisition or rental of rural property this is not applicable due to the need to obtain prior authorization.

15. Which undertakings and/or individuals can be held liable for failure to notify?

a. Banking Regulatory Standpoint

Under the jurisdiction of the Brazilian Central Bank are financial institutions, other institutions authorized to operate by the Brazilian Central Bank and members of the Brazilian Payment System, as well as the natural or legal persons, who: (i) exercise, without due authorization, an activity subject to the supervision or surveillance of the Brazilian Central Bank; (ii) provide independent auditing services for the entities referred to at the beginning of this paragraph; and (iii) act as directors, executive officers, managers, members of the fiscal council, members of the audit committee and members of other bodies provided for in the bylaws or articles of association of the entities referred to at the beginning of this paragraph.

b. Exploitation of the frontier zone and the acquisition or rental of rural property

Please see above for details.

16. What is the focus of the screening, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The restrictions on foreign investments in Brazil are strictly related to the protection of national security and economic welfare.

17. What are the possible outcomes of the foreign investment review screening procedure?

For cases requiring authorization from the Brazilian Central Bank (please refer to question 1), the result may be their authorization or rejection.

Exploitation of the frontier zone and the acquisition or rental of rural property: the possible outcomes can be the following:

a. Approval of the investment

b. Dismissal of the investment

c. Approval subject to one or several conditions/covenants (conditional clearance)

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** Trench Rossi Watanabe and BakerMcKenzie have executed a strategic cooperation agreement for consulting on foreign law.

Canada

1. Is there a foreign investment screening procedure which may apply to lithium investments?

Yes, Investment Canada Act and its regulations may apply to foreign investments involving lithium. The government has also established certain policies for reviewing investments in Canadian entities and assets in critical minerals, including lithium, from foreign state-owned enterprises (SOEs). The government has identified lithium as a critical mineral because of its key role in the renewable energy transition.

Specifically, the government established a list of minerals that are considered critical for the sustainable economic success of Canada and its allies, and recognized that critical minerals are strategic assets that contribute to Canada's national security. The government announced that acquisitions of control of Canadian businesses in the critical minerals sector by foreign SOEs or foreign-influenced private investors that require "net benefit" approval would only receive such approval on an exceptional basis, and that the participation of foreign SOEs or foreign-influenced private investors in any investment (regardless of size, level of interest or value) in a Canadian business operating in the critical minerals sector will support a finding by the Minister of Innovation, Science and Industry (Minister of ISI) that there are reasonable grounds to believe that the investment could be injurious to Canada's national security. Pursuant to this policy, the government has recently ordered the divestiture of three investments by Chinese foreign investors in Canadian businesses that involved lithium. Engaging with counsel in the early stages of a proposed investment in a Canadian business involving lithium is important to understand obligations and risk under the Investment Canada Act.

In addition, the government has introduced draft legislation, Bill C-34, An Act to amend the Investment Canada Act ("**Bill C-34**"), that would amend the Investment Canada Act to, among other things, strengthen the national security provisions. While Bill C-34 is currently before the Canadian Parliament, if passed it would, among other things:

a. require investors to provide notice of certain types of investments **before** their implementation;

b. authorize the Minister of ISI, after consultation with the Minister of Public Safety and Emergency Preparedness (Minister of Public Safety), to impose interim conditions on investments to prevent harm to Canada's national security that could arise during the review;

c. require the Minister of ISI to make an order for the further review of certain investments;

d. allow investors to submit written undertakings to the Minister of ISI to address national security risks, which with the agreement of the Minister of Public Safety, would permit the Minister of ISI to complete its review of and approve the investment;

e. introduce rules to protect information during judicial review proceedings;

f. authorize the Minister of ISI to disclose information that is otherwise privileged under the Investment Canada Act to foreign states for the purposes of foreign investment reviews;

g. establish a financial penalty for failing give notice or file applications for certain investments; and

h. increase the maximum penalty for contravening other provisions of the Investment Canada Act or the regulations.

2. If a foreign investment screening procedure is in place, who is the reviewing agency or decision-maker?

The government agency responsible for economic applications for review (i.e., those meeting certain financial and other thresholds) and notifications in most business sectors is the Investment Review

Directorate. The Investment Review Directorate sits within the recently renamed Foreign Investment Review and Economic Security Branch of the federal department of Innovation, Science and Economic Development Canada (ISED). ISED is overseen by the Minister of ISI.

The government agency responsible for cultural business applications for review and notifications is the Cultural Sector Investment Review (CSIR). CSIR sits within the federal department of Canadian Heritage, which is overseen by the minister of Canadian Heritage.

The Minister of ISI, in consultation with the Minister of Public Safety, is responsible for conducting national security reviews and coordinating with investigative bodies. The sitting government, known as the Governor-in-Council (GiC), has the authority to order a national security review and to take any measures with respect to the investment. The Investment Review Directorate is typically the point of contact for investors throughout a national security review.

3. What types of transactions or events can trigger the application of the screening rules in your regime and are there any particularities that may apply in relation to these triggers (e.g., if a particular percentage share increment is relevant, the meaning of a relevant asset/business transfer in this jurisdiction that may trigger a filing)? Question 4 deals with triggers that are not listed here.

a. Direct majority share transfer (in a domestic entity):

The type of filing required depends on the circumstances of the case.

b. Indirect majority share transfer:

The type of filing required depends on the circumstances of the case.

c. Direct minority share transfer (in a domestic entity):

It depends on the circumstances of the case.

d. Indirect minority share transfer:

It depends on the circumstances of the case.

e. Asset/business transfer involving domestic assets/business:

It depends on the circumstances of the case.

f. Real estate transactions (e.g., land purchases):

It depends on the circumstances of the case.

g. Purely internal restructurings/reorganizations (i.e., where there is no change in ultimate control):

It may still be subject to the national security provisions of the Investment Canada Act.

h. Establishment of a full-functional JV (without contribution of assets):

It depends on the circumstances of the case.

i. Establishment of a non-full-functional JV (without contribution of assets):

It depends on the circumstances of the case.

j. A transfer or sale of existing intellectual property rights:

It depends on the circumstances of the case.

k. Different from the above, i.e., there are other transaction types or circumstances that trigger a filing in this jurisdiction (to answer question 4)

4. If the triggering transactions or events were not listed under question 3 above, and other triggers, different from the above apply, what other transaction types or events will trigger a foreign investment review filing in this jurisdiction?

Establishing a new Canadian business also requires an economic or cultural business notification.

In addition to possible filings, any investment in a Canadian business by a non-Canadian investor, regardless of value or structure, can be subject to national security screening and may trigger a national security review.

5. Is it necessary for the Target to have any presence in this jurisdiction?

Yes.

6. If it is necessary for the Target to have any presence in this jurisdiction, what would the establishment threshold(s) (e.g., a representative/sales office, branch, or stand-alone subsidiary) be?

The economic and cultural provisions of the Investment Canada Act apply to the (a) establishment of a new Canadian business or (b) acquisition of control of a Canadian business, by a non-Canadian. A "Canadian business" is defined as a business carried on in Canada that has: (a) a place of business in Canada; (b) individuals in Canada who are employed or self-employed in connection with the business; and (c) assets in Canada used in carrying on the business.

The national security provisions of the Investment Canada Act apply to the (a) establishment of a new Canadian business; (b) acquisition of control of a Canadian business; or (c) acquisition, in whole or in part, or to establish an entity carrying on all or any part of its operations in Canada, if the entity has: (i) a place of operations in Canada; (ii) individuals in Canada who are employed or self-employed in connection with the entity's operations; or (iii) assets in Canada used in carrying on the entity's operations, by a non-Canadian.

7. Are there any notification thresholds that trigger foreign investment review screening, other than the transactions or events noted in questions 3 or 4 above?

Yes. Mandatory filings are triggered by the transaction structure and for suspensory filings by the applicable financial thresholds. The financial thresholds depend on various factors, including the identity of the non-Canadian investor (WTO or trade agreement investor versus other country of origin, non-SOE versus SOE), the target's activities (cultural versus noncultural) and the transaction structure (direct versus indirect).

The establishment of a new Canadian business by a non-Canadian also requires an economic or cultural business notification.

8. If there are value thresholds that would trigger foreign investment review screening (e.g., turnover thresholds; market share; asset value thresholds), please advise, who the undertakings concerned would be (i.e., who are the relevant parties for meeting the value thresholds) in an acquisition (e.g., (i) acquirer's group and (ii) the target only; (i) acquirer's group and (ii) the seller plus target; (i) acquirer's group; (ii) target; (iii) the seller separately)?

There are value thresholds for the target. Depending on the circumstances, the value thresholds are based on either the target's enterprise value or the book value of the target's assets.

9. Is the foreign investment review filing obligation voluntary or mandatory in this jurisdiction (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction, event or sector involved, please specify accordingly and note how it varies, i.e., in which type(s) of transaction, event or sector(s) this would vary.

The Canadian foreign investment review regime provides for both mandatory and voluntary filings.

Mandatory filings are required for the acquisition of "control" of Canadian businesses. The type of mandatory filing that will be required depends on the transaction structure and, if applicable, whether the financial threshold is exceeded. There are three types of mandatory filings: application for "net benefit" approval, economic notification and cultural business notification.

Where a mandatory filing is not required, an investor may make a voluntary filing under the national security provisions of the Investment Canada Act. Making a voluntary national security filing reduces the period during which the Minister of ISI or GiC may initiate a national security review of the transaction from five years from implementation of the investment to 45 calendar days from filing a complete voluntary notification.

10. Is a foreign investment review filing suspensory (i.e., approval must be obtained prior to closing) in this jurisdiction? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

For investments that require a pre-closing application for "net benefit" approval, the filing is suspensory.

For investments where a national security review is initiated prior to implementation, the investment may not be implemented until the review is completed (if the proposed transaction is not blocked, and subject to any conditions that may be imposed).

11. Which party is responsible for preparing and submitting the foreign investment review filing?

The non-Canadian investor is responsible for preparing and submitting the filing.

12. What is the deadline to notify a foreign investment transaction in this jurisdiction?

Reviewable investments have no deadline to notify, but the non-Canadian investor must obtain a "net benefit" approval from the relevant ministers prior to implementing the investment.

Mandatory economic or cultural business notifications must be filed within 30 days of the investment being implemented. Investors often file notifications at least 45 days prior to closing to obtain certainty that the investment will not raise national security concerns.

13. What are the statutory deadlines within which the authority must take a decision on a foreign investment review filing in this jurisdiction? Please indicate if there are different deadlines for a first phase review and a second or "in-depth" review phase (or any other applicable review period(s), such as a pre-review period). Please specify calendar days or working days.

Investments that require a pre-closing application for "net benefit" approval are subject to an initial 45-calendar day waiting period, which the regulator can unilaterally extend by an additional 30 calendar days. Further extensions may be implemented with the non-Canadian investor's consent.

For national security reviews, the government has an initial 45 calendar days after an application for "net benefit" approval, mandatory economic or cultural business notification, or voluntary national security notification is certified as complete to notify the investor of potential national security concerns.

Where no filing is made, the government may notify an investor of potential national security concerns or initiate a national security review at any time within five years of the date the investment is implemented. A national security review is a multistep process, and a full review can take up to 200 calendar days (or longer if the Minister of ISI and investor agree to a further extension, which is typically provided in practice).

14. Is there a filing fee for a foreign investment review filing in this jurisdiction? If yes, by when do filing fees have to be paid (e.g., paid pre-filing, post-decision, or at another time)?

No.

15. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance in this jurisdiction?

Failure to notify an investment may lead to enforcement proceedings against the investor that can result in a court order requiring the investor to come into compliance or divest control of the Canadian business, as well as monetary fines of up to CAD 10,000 per day of noncompliance.

16. Which undertakings and/or individuals can be held liable for failure to notify?

Individuals and the undertaking making the investment can be held liable for implementing a reviewable investment without obtaining "net benefit" approval or for failure to file a mandatory notification.

17. What is the focus of the foreign investment review screening in this jurisdiction, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The focus of both the economic and cultural business provisions of the Investment Canada Act is to satisfy the relevant ministers that the investment is likely to be of "net benefit" to Canada. The ministers will consider the following factors when making a "net benefit" determination:

a. The effect of the investment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada and on exports from Canada

b. The degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada of which the Canadian business or new Canadian business forms or would form a part

c. The effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada

d. The effect of the investment on competition within any industry or industries in Canada

e. The compatibility of the investment with national industrial, economic and cultural policies, considering industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment

f. The contribution of the investment to Canada's ability to compete in world markets

For investments by non-Canadians scrutinized under the national security provisions of the Investment Canada Act, the standard is whether the investment by a non-Canadian would be "injurious to national

security." The Minister of ISI or GiC may consider factors, including but not limited to the following, as they relate to national security:

a. The potential effects of the investment on Canada's defense capabilities and interests, including but not limited to the defense industrial base and defense establishments

b. The potential effects of the investment on the transfer of sensitive technology or knowhow outside of Canada, including consideration of whether the investment provides access to information not in the public domain related to the research, design or manufacture of sensitive technologies (Sensitive technology areas include those that have military, intelligence or dual military/civilian applications.)

c. Involvement in the research, manufacture or sale of goods/technology identified in Section 35 of the Defence Production Act

d. The potential impact of the investment on the supply of critical goods and services to Canadians, or the supply of goods and services to the government of Canada

e. The potential impact of the investment on critical minerals and critical mineral supply chains. See response to question 1 for a detailed discussion relating to the government's policies for reviewing investments in Canadian entities and assets in critical minerals, including lithium, from foreign SOEs.

f. The potential impact of the investment on the security of Canada's critical infrastructure (Critical infrastructure refers to processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government.)

g. The potential of the investment to enable foreign surveillance or espionage

h. The potential of the investment to hinder current or future intelligence or law enforcement operations

i. The potential impact of the investment on Canada's international interests, including foreign relationships

j. The potential of the investment to involve or facilitate the activities of illicit actors, such as terrorists, terrorist organizations, organized crime or corrupt foreign officials

k. The potential of the investment to enable access to sensitive personal data that could be leveraged to harm Canadian national security through its exploitation, including, but not limited to: personally identifiable health or genetic (e.g., health conditions or genetic test results), biometric (e.g., fingerprints), financial (e.g., confidential account information, including expenditures and debt), communications (e.g., private communications), geolocation or personal data concerning government officials, including members of the military or intelligence community

18. What are the possible outcomes of the foreign investment review screening procedure in this jurisdiction?

The possible outcomes of any foreign investment review in Canada are the following:

- For a mandatory application for "net benefit" approval, the following outcomes are possible:
  - Clearance of the investment
  - Clearance of the investment with conditions
  - Denial of the investment
- For a mandatory notification or a voluntary notification, the investor will receive a letter confirming that a complete notification was filed and confirmation that the investment did not require "net benefit" approval.

- For an investment subject to a national security review, the following outcomes are possible:
  - Ceasing of the national security review with no further action taken
  - Clearance of the investment with conditions
  - Denial of the investment
  - Divestiture of the acquisition (if the investment has been implemented)

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Chile

Is there a foreign investment screening procedure in this jurisdiction which may apply to lithium investments?

No. There is no screening procedure in Chile. However, a foreign investor may notify of an investment that has already been made into the country and request a "Foreign Investor Certificate."

The certificate will give the foreign investor the following rights under Chilean Law No. 20,848 of 2015:

- Right to repatriate the capital transferred
- Right to remit the liquid profits generated by the investment, subsequent to compliance with the corresponding tax obligations established under Chilean law
- Right to access the formal foreign exchange market in order to: (i) exchange the currency that constituted the investment; (ii) obtain the necessary foreign currency to repatriate the capital invested; and (iii) obtain the necessary foreign currency to remit the liquid profits generated by the investment, subsequent to compliance with the corresponding tax obligations established under Chilean law
- Right not to be subject to arbitrary discrimination, either directly or indirectly (therefore, foreign investors are governed by the same common legal regime applicable to domestic investors)
- Exemption from value-added tax on the import of capital goods.

The agency is called the Agencia de Promoción de Inversiones Extranjeras para Chile (Agency for the Promotion of Foreign Investment in Chile), also called InvestChile. The agency does not review or screen the transactions but issues the Foreign Investor Certificate referred to above, if a foreign investment of at least USD 5 million or its equivalent in other currencies has been made in the country.

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China

1. Is there a foreign investment screening procedure in this jurisdiction which may apply to lithium investments?

Yes, China implements dual foreign investment review regimes that encompasses a "Negative List" screening and a more general national security review. The lithium mining or processing has been removed from and is currently not on the "Negative List", meaning that foreign investors are generally permitted to invest in the lithium business in China.

However, any foreign investment in China must still be subject to the national security review established under the *Measures for Security Review of Foreign Investments* issued in 2020 (the "**NSR Measures**"). The NSR Measures require foreign investors to submit a notification for clearance if the investor acquires "actual control" over an investee operated in any "critical energy or resources" sector. There is no law or regulation specifically designating lithium as critical resources but it is our view that very likely lithium investment will trigger a national security review given the fact that foreign investment in the mining sector in China has traditionally been regarded sensitive for many reasons.

We should note that despite China's abundance of lithium resources, lithium investment in China is not attractive to foreign investors for many reasons. Business-wise, domestic lithium investments are very competitive currently. Regulatory-wise, mining investments in China are generally highly regulated and the complex permitting regimes presents a great obstacle for foreign investors to invest in the mining sector. The national security or state secrecy restrictions also play a role with respect to surveying or other related mining activities.

2. Who is the reviewing agency or decision-maker in respect of the national security review?

The national security review office under the auspices of the National Development and Reform Commission (NDRC) and co-led by the NDRC and the Ministry of Commerce (MOFCOM) is the national security reviewing agency.

3. What types of transactions or events can trigger the national security review?

a. Greenfield investment

b. Direct or indirect acquisition of actual control

This applies to any acquisition, direct or indirect, of "actual control" of a target entity. "Actual control" would be deemed satisfied if: (a) the foreign investor holds 50% or more of the equity interest in the target entity; (b) the foreign investor holds less than 50% of the equity interest in the target entity but enjoys voting rights sufficient for it to exert significant influence upon the board or shareholders meeting's decisions; or (c) the foreign investor has the power to exert significant influence on the business operations, human resources, financial, technical or other matters. These broadly defined thresholds give the revieing agency wide discretion to determine whether a mandatory filing may be triggered.

c. Other types of investments

The catch-all provision of the NSR Measures generally allow the reviewing agency to have wide discretion to determine whether any other form of investment (including asset acquisition) may be covered by these measures.

4. Is it necessary for the Target to have any presence in this jurisdiction?

Yes. Although there is a stand-alone regulation that permits a foreign entity, upon due registration with the Chinese business registration authority to conduct exploratory activities, practically it is not very common for various reasons.

5. If it is necessary for the Target to have any presence in this jurisdiction, what would the establishment threshold(s) (e.g. a representative / sales office, branch, or stand-alone subsidiary) be?

A standard-alone subsidiary must be established for practical reasons.

6. Is the foreign investment review filing obligation voluntary or mandatory in this jurisdiction (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction, event or sector involved, please specify accordingly and note how it varies, i.e., in which type(s) of transaction, event or sector(s) this would vary.

The national security review is a mandatory procedure, although practically the foreign investor has to conduct an analysis to ascertain whether the proposed transaction triggers such review. Due to the ambiguities of the NSR Measures and lack of case precedents (since the NSR Measures are relatively new), such analysis may not yield a clear conclusion and the foreign investor has to make a business decision whether to make a voluntary filing, even if technically the mandatory filing requirements are not met.

The national security reviewing office has the jurisdiction to call in any investment even if the mandatory filing requirements are not met.

7. Is a foreign investment review filing suspensory (i.e., approval must be obtained prior to closing) in this jurisdiction? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

If the investor makes a filing or the regulatory calls in a filing prior to the implementation of the investment, such review will have a suspensory effect. If the investor chooses to not make a voluntary notification, then it is possible to close without approval, but the transacting parties run the risk of the transaction being "unwound" after the closing.

8. Which party is responsible for preparing and submitting the foreign investment review filing?

Both the direct investor and the "relevant domestic parties" are responsible for preparing and submitting the filing. In practice, it is typically the direct investor who makes the filing if triggered.

9. What is the deadline to notify a foreign investment transaction in this jurisdiction?

There is no specific deadline for a NSR filing. However, if the mandatory filing requirements are triggered, a filing must be made prior to the closing of the transaction.

10. Is there a filing fee for a foreign investment review filing in this jurisdiction?

No.

11. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance in this jurisdiction?

The penalties are potential divestment / unwinding of transaction, and "any other measures as necessary to counteract the national security concerns".

12. What are the possible outcomes of the foreign investment review screening procedure in this jurisdiction?

The following outcomes are possible:

- Approval (conditional or unconditional)
- Rejection
- Unwinding or divestment (only applicable where called in by the regulator after closing)

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Democratic Republic of Congo

1. Is there a foreign investment screening procedure which may apply to lithium investments?

Yes.

2. If the response to question 1 is yes, who is the reviewing agency or decision-maker?

The decision-maker is the Minister for Mines.

3. What types of transactions or events can trigger the application of the screening rules in your regime? Please select all that apply.

a. Direct majority share transfer (in a domestic entity)

b. Indirect majority share transfer

c. Asset/business transfer involving domestic assets/business.

4. Please specify any particularities that may apply in relation to the above (e.g., if a particular % share increment is relevant, the meaning of a relevant asset/business transfer in your jurisdiction that may trigger a filing). Please also add any other transaction types or circumstances that will trigger a filing in your jurisdiction.

Please be aware that the direct and/or indirect majority share transfer of a company holding an exploitation permit is subject to the prior approval of the Minister for Mines. On this point, the Mining Code does not specify any percentage share increment. However, we believe that the majority share transfer mentioned above is the transfer of more than 50% of the said share.

The transfer of mining rights and permanent quarrying authorizations is subject to the prior approval of the Minister for Mines.

5. Is it necessary for the Target to have any presence in your jurisdiction? If the answer is yes, please advise what would be the establishment threshold (e.g., rep/sales office, branch, or stand-alone subsidiary). If the answer is no, please explain on what basis the authority takes jurisdiction.

In the event of an indirect acquisition of a Democratic Republic of Congo (DRC) company holding an exploitation permit, we are of the view that the target – i.e., the company which owns the majority share in the DRC company holding an exploitation permit – does not need to have any local presence. Indeed, the authority does not have any jurisdiction over the target in this case. The notification requirement of the relevant transaction is rather imposed on the relevant DRC company holding an exploitation permit.

6. Are there any notification thresholds for screening beyond the trigger events noted in question 3? If the only criterion is that the deal falls within a certain sector please state that this is the case.

To the extent that the direct or indirect acquisition of shares of a mining company holding an exploitation permit concerns the majority share of said mining company, the prior approval of the Minister for Mines is required.

7. If there are value thresholds, please advise for an acquisition, who are the undertakings concerned (i.e., relevant parties for meeting the value thresholds) for an acquisition (e.g., (i) acquirer's group and (ii) target only; (i) acquirer's group and (ii) seller plus target; (i) acquirer's group; (ii) target; (iii) seller separately)?

N/A

8. Is a filing obligation voluntary or mandatory (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction or sector involved, please specify accordingly.

The filing obligation is mandatory either for the majority share transfer of a company holding an exploitation permit or for the transfer of mining rights or permanent quarrying authorizations. This said, we are not aware of applicable penalties for failure to notify or for implementing a transaction without approval.

9. Is filing suspensory (i.e., approval must be obtained prior to closing)? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

As the Mining Code does not provide for any sanctions when it comes to the failure by the relevant party to the transaction to get the prior approval of the Minister for Mines, we are not in a position to ascertain whether the filing is suspensory or not.

10. Which party is responsible for preparing and submitting the filing?

It is the target – i.e., the company holding an exploitation permit in the case of a majority share acquisition – or either of the transferor and the transferee – in the case of a transfer of mining rights or permanent quarrying authorizations – is responsible for preparing and submitting the filing.

11. What is the deadline to notify?

The law does not provide a deadline to notify. However, as we understand it, the notification/approval application should be done prior to the relevant transaction.

12. What are the statutory deadlines within which the authority must take a decision? Please indicate if there are deadlines for a first phase review and a second phase in-depth review (or any other applicable review periods, such as pre-review period). Please specify calendar days or working days.

The law is silent when it comes to the procedure relating to the indirect or direct acquisition of majority share of a mining company holding an exploitation permit.

As regards the transfer of mining rights or permanent quarrying authorizations, the relevant procedure and deadlines are as follows:

- First, the *Cadastre Minier Central* reviews the application dossier and issues its opinion within a period of 20 working days.

- The favorable opinion of the *Cadastre Minier Central* and the application dossier ("**Application Dossier**") are then forwarded to the *Direction des Mines* for technical examination. The *Direction des Mines* has 20 working days from the receipt of the Application Dossier to carry out the examination and issue its opinion.

- The opinion of the *Direction des Mines* is then transferred to the *Cadastre Minier Central* for the purpose of public posting within one day and insertion to the Application Dossier.

- The *Cadastre Minier Central* forward the Application Dossier within a period of 30 working days to the Mining Environment Protection Directorate and the Congolese Environment Agency for the purpose of an environmental audit.

- The Mining Environment Protection Directorate issues to the transferor a certificate evidencing that the latter is in good standing with respect to its environmental obligations ("**Certificate**") within five working days from the receipt of the Application Dossier from the *Cadastre Minier Central*.

- Within 10 working days from the issuance of the Certificate, the Minister for Mines approves or rejects the mining rights transfer application.

13. Is there a filing fee? If the answer is yes, when do filing fees have to be paid (e.g., pre-filing, post-decision)?

Yes.

A filing fee is payable for the application of the transfer of mining rights or permanent quarrying authorizations. A further registration fee is payable by the transferor once it is notified of the favorable opinion from the *Direction des Mines*.

Furthermore, please be aware that any share transfer of a company holding a mining permit is subject to the payment of a fee amounting to 1% of the value of the shares intended to be transferred.

14. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance?

There is none that we are aware of.

15. Which undertakings and/or individuals can be held liable for failure to notify?

As regards the transfer of majority share of a mining company holding an exploitation permit, it is the target which is held liable for failure to notify.

When it comes to the transfer of mining rights or permanent quarrying authorizations, the law does not specify the entities and/or individuals liable for failure to notify.

16. What is the focus of the screening, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The aim of control is to protect the country's economy and sovereignty.

17. What are the possible outcomes of the foreign investment review screening procedure?

Please note that the completion of an indirect or direct acquisition of majority share of a mining company holding an exploitation permit by an investor may be hindered by the absence of the approval from the Minister for Mines.

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Germany

1. Is there a foreign investment screening procedure in this jurisdiction which may apply to lithium investments?

Yes. Under German foreign investment review laws, a mandatory filing requirement applies for the acquisition of at least 20% of the voting rights or a comparable amount of control in a German target company that extracts, processes or refines raw materials or their ores that have been defined as critical raw materials in the annex to a European Commission communication as part of the European Commission's Raw Materials Initiative and that the Federal Ministry for Economic Affairs and Climate Protection (Bundesministerium für Wirtschaft und Klimaschutz (BMWK)) has published in the Federal Gazette. This includes lithium.

2. If a foreign investment screening procedure is in place, who is the reviewing agency or decision-maker?

The reviewing agency or decision-maker is the BMWK.

3. What types of transactions or events can trigger the application of the screening rules in your regime and are there any particularities that may apply in relation to these triggers (e.g., if a particular percentage share increment is relevant, the meaning of a relevant asset/business transfer in this jurisdiction that may trigger a filing)?

a. Direct majority share transfer (in a domestic entity)

b. Indirect majority share transfer

c. Direct minority share transfer (in a domestic entity):

Applicable thresholds are the acquisition of 10%, 20%, or 25% of the voting rights in the target entity, assuming the investor had no voting rights before, depending on the business sector of the target. If the investor already held voting rights prior to the transaction, a case-by-case assessment of whether German foreign investment review regulations would be triggered is required.

For the acquisition of a German target company that extracts, processes or refines lithium, the applicable threshold would be 20%. If the German target entity only otherwise deals with lithium, without pursuing any of the other aforementioned activities, and assuming no other category triggering a filing requirement applies, the applicable threshold would be 25%.

d. Indirect minority share transfer:

Applicable thresholds are the acquisition 10%, 20%, or 25% of the voting rights in the target entity, assuming the investor had no voting rights before, depending on the business sector of the target. If the investor already held voting rights prior to the transaction, a case-by-case assessment of whether German foreign investment review regulations would be triggered is required.

As per above, for the acquisition of a German target company that extracts, processes or refines lithium, the applicable threshold would be 20%. If the German target entity only otherwise deals with lithium, without pursuing any of the other aforementioned activities, and assuming no other category triggering a filing requirement applies, the applicable threshold would be 25%.

e. Asset/business transfer involving domestic assets/business:

Please note that any asset transfer would only be in scope of German foreign investment review laws, if the assets of a German target entity, that extracts, processes or refines lithium encompass:

- All of the assets of the German target entity (including the non-lithium related assets); or
- All of the assets of a separable business unit of the German target entity being acquired (here the acquisition of only the lithium or lithium related assets could suffice to trigger the filing/clearance requirement, depending on whether the threshold of a separable business unit is met).

f. Asset/business transfer not involving any domestic assets/business:

Please note that asset/business transfers not involving assets located in Germany also fall under the German foreign investment review regime if the assets transferred are owned by the German target entity.

On the acquisition of lithium-related assets, please see above.

g. Real estate transactions (e.g., land purchases)

h. Purely internal restructurings/reorganizations (i.e., where there is no change in ultimate control)

i. A transfer or sale of existing intellectual property rights

j. The grant of an exclusive license of intellectual property rights

k. The grant of a non-exclusive license of intellectual property rights:

It depends on the circumstances of the case.

4. Is it necessary for the Target to have any presence in this jurisdiction?

Yes.

5. If it is necessary for the Target to have any presence in this jurisdiction, what would the establishment threshold(s) (e.g., a representative/sales office, branch, or stand-alone subsidiary) be?

The establishment threshold would be German subsidiaries, but also branches and representative/sales offices under specific circumstances are in scope.

6. Are there any notification thresholds that trigger foreign investment review screening, other than the transactions or events noted above?

Yes, in Germany the acquisition of control other than through the formal acquisition of voting rights can trigger a foreign investment review filing requirement with the BMWK.

Such atypical acquisition would, in accordance with German foreign investment review laws, apply in any of the following cases:

- The assurance of additional seats or majorities on supervisory bodies or in management
- The granting of veto rights in strategic business or personnel decisions
- The granting of rights over information that relates to the thresholds and criteria based on which a mandatory filing and clearance requirement applies.

7. Is the foreign investment review filing obligation voluntary or mandatory in this jurisdiction (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction, event or sector involved, please specify accordingly and note how it varies, i.e., in which type(s) of transaction, event or sector(s) this would vary.

In Germany, there are both mandatory filing obligations and the ability to make voluntary filings.

Mandatory filing obligations

The German foreign investment mandatory filing/clearance obligation applies when there is a proposed acquisition of voting rights/control over targets in **specific business sectors**.

The mandatory filing obligation applies to all acquisitions relating to target companies that fall into the business sectors and/or meet the respective thresholds in such a way that a mandatory filing and clearance requirement applies. These thresholds are listed in the German foreign investment review regulations contained in Section 55a paragraph 1 and Section 60 paragraph 1 of the German Foreign Trade Ordinance (Außenwirtschaftsverordnung (AWV)) available (in German) here: [redacted].

For the acquisition of a German target company that extracts, processes or refines lithium, a mandatory filing requirement applies. If the target company only otherwise deals in lithium or lithium related products, a voluntary filing may be recommendable.

Voluntary filings

When a mandatory filing obligation does not apply, a voluntary filing obligation can arise where the investor is from outside the EU or EFTA, and when additional criteria apply. These criteria include, for example, when the target is involved in the production or development of dual-use items, has business contacts with governmental or state entities or defense companies, or has received public funding.

This suggests that a transaction meeting any of these criteria could be reviewed on an ex officio basis by the BMWK. However, one advantage of making a voluntary filing, is that the filing could significantly reduce the period during which the BMWK could review the transaction, from five years from the signing of the transaction contract to two months from the voluntary notification with the BMWK.

8. Is a foreign investment review filing suspensory (i.e., approval must be obtained prior to closing) in this jurisdiction? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

No, the filing in and of itself is not suspensory. However, closing prohibitions apply with respect to any acquisition subject to German foreign investment review regulations to which a mandatory clearance requirement applies (please see list of sectors above).

In these cases, the transaction must not close before the BMWK issues the clearance.

9. Which party is responsible for preparing and submitting the foreign investment review filing?

The direct investor is responsible for preparing and submitting the filing.

10. What is the deadline to notify a foreign investment transaction in this jurisdiction?

There is no specific deadline for the notification of the transaction to the BMWK.

However, when a mandatory filing/clearance requirement applies, the transaction cannot close without being cleared by the BMWK.

11. What are the statutory deadlines within which the authority must take a decision on a foreign investment review filing in this jurisdiction? Please indicate if there are different deadlines for a first phase review and a second or "in-depth" review phase (or any other applicable review period(s), such as a pre-review period). Please specify calendar days or working days.

The initial statutory deadline for a Phase 1 review is two calendar months.

If the authorities decide to review the transaction, they have to make that decision within those two months, otherwise, the transaction is deemed cleared. In practice, the authorities will always make the decision to either clear the transaction, issue a certificate of non-objection or initiate a Phase 2 review. A Phase 2 review is a more thorough review following the Phase 1 review.

If the authorities decide to initiate a Phase 2 review, another four-calendar-month period is triggered, which is, however, subject to several possible prolongations. The expiry of the deadline in a Phase 2 review is, for example, placed on hold in the case of negotiations between the parties to the acquisition and the German government on the terms of the clearance and the conditions for providing the clearance.

12. Is there a filing fee for a foreign investment review filing in this jurisdiction? If yes, by when do filing fees have to be paid (e.g., paid pre-filing, post-decision, or at another time)?

Yes.

The BMWK has enacted the "Special Fee Regulation", imposing fees for various types of foreign investment review procedures and decisions. Notably, fees incurring for a review and issuance of a certificate of non-objection or clearance decision in Phase 1 amount to EUR 800. The fees incurring for the clearance decision or decision to issue a certificate of non-objection in Phase 2 amount to between EUR 2,500 and EUR 6,000 by default, but may increase to up to EUR 30,000 if the case reviewed entails the necessity to adopt special protective measures in order to protect the public order and security or essential security interests or otherwise poses high difficulties.

13. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance in this jurisdiction?

There are no statutory penalties for failing to notify or for closing the transaction without a foreign investment review clearance in Germany. However, for a mandatory filing/clearance requirement, there are closing prohibitions, the infringement of which entails criminal or administrative liability. A violation of the closing prohibitions can be punished with imprisonment of up to five years or a monetary fine.

14. Which undertakings and/or individuals can be held liable for failure to notify?

Individuals on both the investor and the seller side can be held liable for failure to infringe the closing prohibitions without a clearance, depending on the closing prohibition that has been infringed. In addition to the acting natural persons, the investing or selling companies that exercised their duties when the infringement occurred can have a monetary fine imposed on them.

15. What is the focus of the foreign investment review screening in this jurisdiction, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The focus of the foreign investment review screening process is on the "public order or security" of Germany, other EU member states, and projects and programs of union interest.

For specific types of companies subject to the so-called mandatory "sector-specific review" regime, the standard against which foreign investments are assessed is the "essential security interests" of Germany.

There are no particular substantive tests or abstract criteria for assessing whether the "public order or security" or "essential security interests" are affected. The fact that the German target company falls under a business category or sector to which a mandatory clearance requirement applies would typically indicate that the acquisition of the target would also have an impact on the "public order or security" or the "essential security interests" would have to be considered.

16. What are the possible outcomes of the foreign investment review screening procedure in this jurisdiction?

The possible outcomes of any foreign investment review in Germany are the following:

For a mandatory filing and clearance requirement, any of the following outcomes are possible:

- Clearance of the acquisition
- Clearance of the acquisition with restrictions
- Denial of the acquisition

For a voluntary filing requirement, or no filing requirement at all, any of the following outcomes are possible:

- A certificate of non-objection after a voluntary filing or an ex officio review
- A certificate of non-objection after a voluntary filing or an ex officio review with conditions or following the provision of assurances by the parties
- A denial of the transaction if in the scope of German foreign investment review laws

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Ghana

1. Is there a foreign investment screening procedure which may apply to lithium investments?

Yes.

However, there are slightly different procedures for foreign investment, for acquiring shares and asset/business transfers involving domestic assets in a mining company in Ghana.

Foreign investment screening procedure for the acquisition of shares

First, any person who intends to acquire more than 20% of the shares in a mining company (directly or indirectly) is required to submit a written notice to the Minister of Lands and Natural Resources ("**Minister**") expressing their intention to become a controller of the mining company. In practice, however the Minister is notified through the Minerals Commission.

Second, upon receipt of the written notice, the Minister may, through written notice, request the person to provide any additional information or documents that the Minister reasonably deems necessary to make an informed decision regarding the issuance of a notice of objection or otherwise.

Third, the Minister is required to, within a period of two months from the date of receiving the notice, issue a written notice to the acquirer to either confirm the Minister's lack of objection to the person becoming a controller of the mining company or raise any objections within the specified timeframe.

If no objection notice is served within the two months, the acquirer is permitted to become a controller of the mining company. However, where the Minister objects to the acquirer becoming a controller of the mining company, the Minister is required to serve a written notice of objection on the acquirer, if the Minister considers on reasonable grounds that the public interest would be prejudiced by the acquirer becoming a controller of the mining company.

In addition to the above, all entities with foreign participation and operating in Ghana are mandated by law to register with the Ghana Investment Promotion Centre. Foreign investors wishing to engage in mining activities are required to meet the minimum capital requirement of USD 200,000, if they are investing in a joint venture with Ghanaian citizens, or USD 500,0000.

Foreign investment screening procedure for asset/business transfer involving domestic assets/business

First, the transfer, assignment, mortgage, or any form of encumbrance of a mineral right, either in whole or in part, requires prior written approval from the Minister. This approval shall not be unreasonably withheld or granted subject to unreasonable conditions.

Second, the Minister is required to provide his decision in writing within 30 days of receipt of the application for approval. If the Minister does not provide a written decision to the applicant within 30 days of receiving the approval request, the Minister must, upon the applicant's request, provide written reasons for the delay in communicating a decision on the application within 14 days of receipt of the request.

2. If the response to question 1 is yes, who is the reviewing agency or decision maker?

The Minister is responsible for reviewing the written notice submitted by the acquirer and issuing a written notice to either confirm that the Minister has no objection to the acquisition or raise any objections. The Minister, however, collaborates with the Minerals Commission during the decision-making process.

3. What types of transactions or events can trigger the application of the screening rules in your regime?

- Direct majority share transfer (in a domestic entity)
- Indirect majority share transfer
- Direct minority share transfer (in a domestic entity)
- Indirect minority share transfer
- Asset/business transfer involving domestic assets/business
- Purely internal restructurings/reorganizations (i.e., where there is no change in ultimate control).

4. Please specify any particularities that may apply in relation to the above (e.g., if a particular % share increment is relevant, the meaning of a relevant asset/business transfer in your jurisdiction that may trigger a filing). Please also add any other transaction types or circumstances that will trigger a filing in your jurisdiction.

Particularities applicable to share transfers (direct/indirect/majority/minority share transfers)

Persons who intend to acquire more than 20% of the shares of a mining company must notify the Minister prior to the intended share acquisition.

The Minister may object to the share acquisition where he considers on reasonable grounds that the public interest would be prejudiced by the person concerned acquiring a controlling interest in the company. The Minister's objection must be made in writing and served on the acquirer within two months from the date of service of the notice of the intended acquisition.

Where the Minister fails to object within the stipulated two month period, the law permits the acquirer to presume that the Minister has no objection to the intended acquisition, and the acquirer may proceed with the acquisition.

Notably, the Minister is required to obtain the advice and recommendation of the Minerals Commission before making a decision on whether to object or grant approval to the intended share acquisition.

Further, where the underlying ownership of the entity that holds a mineral right changes by 5% or more, the entity must notify the Commissioner-General within 30 days from the date of the change.

Particularities applicable to asset/business transfer involving domestic assets

Under the law, a mineral right shall not in whole or in part be transferred, assigned, mortgaged or otherwise dealt in, in any manner without the prior written approval of the Minister. A mineral right refers to either a reconnaissance licence, a prospecting licence, a mining lease, a restricted reconnaissance licence, a restricted prospecting licence, or a restricted mining lease.

The Minister is required to give a decision in writing to the applicant, within 30 days of receipt of an application for approval.

5. Is it necessary for the Target to have any presence in your jurisdiction? If the answer is yes, please advise what would be the establishment threshold (e.g., rep/sales office, branch, or stand-alone subsidiary). If the answer is no, please explain on what basis the authority takes jurisdiction.

Yes.

To trigger a filing obligation in Ghana, the Target must be a "mining company" within the meaning of the Minerals and Mining Act 2003 ("**Act**"). The Act defines a mining company as a company which is or whose subsidiary is the **holder of a mineral right** granted under the Act but does not include:

- A company listed on a stock exchange, or
- A company of which the market value of the assets held by the company or its subsidiary in Ghana represents less than 50% of the market value of all assets owned by the company.

Further, a mineral right may only be granted to a body corporate incorporated under the Companies Act, 2019 (Act 992) or the Incorporated Private Partnership Act 1962 (Act 152), or any other enactment in force.

As such the Target may either be incorporated in Ghana or be incorporated outside Ghana with a subsidiary incorporated in Ghana. In either case, persons who directly or indirectly acquire a controlling interest (more than 20% of the shares of the Target) must notify the Minister.

Consequently, considering the fact that the Target must either be incorporated in Ghana or incorporated outside Ghana with a subsidiary in Ghana, it is necessary for the Target to have a presence in Ghana. This may be by virtue of holding shares or partnership interest in an entity incorporated in Ghana, which holds a mineral right.

6. Are there any notification thresholds for screening beyond the trigger events noted in question 3? If the only criterion is that the deal falls within a certain sector please state that this is the case.

There are no other notification thresholds for screening beyond the trigger events noted in question 3.

7. If there are value thresholds, please advise for an acquisition, who are the undertakings concerned (i.e., relevant parties for meeting the value thresholds) for an acquisition (e.g., (i) acquirer's group and (ii) target only; (i) acquirer's group and (ii) seller plus target; (i) acquirer's group; (ii) target; (iii) seller separately)?

There are no value notification thresholds.

8. Is a filing obligation voluntary or mandatory (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction or sector involved, please specify accordingly.

The filing obligations are mandatory.

First, a mining company that fails to obtain the prior written approval of the Minister to transfer, mortgage, assign or otherwise encumber a mineral right, in whole or in part, is liable on summary conviction (on first conviction), to a penalty of a fine not more than the Ghanian cedi equivalent of USD 5,000 or a penalty which is not more than twice the penalty upon subsequent summary convictions.

Note that, where an offence is committed by a body corporate, each director or an officer (in the case of a company), or each partner or officer of that body (in the case of a partnership), will be considered to have committed the offence, unless the person proves that the offence was committed without the person's knowledge or connivance and that the person exercised due care and diligence to prevent the commission of the offence having regard to all the circumstances.

Second, where a mining company fails to give written notice of the fact that a person has become or ceased to be a controller of the mining company, is liable to an administrative penalty of the Ghanian cedi equivalent of USD 1,000, payable to the Minerals Commission.

Third, an entity that fails to comply with the obligation to notify the Commissioner-General of Tax where the underlying ownership of the entity that holds the mineral rights changes by 5% or more, commits an offense and is liable on summary conviction to a fine of not more than 200 penalty units for each failure (a penalty unit = GHS12).

9. Is filing suspensory (i.e., approval must be obtained prior to closing)? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

The filing obligation is suspensory. No transaction which will result in a person becoming a controller, or transfer, assignment or mortgage of a mineral right, may be concluded before approval is obtained. Accordingly, the suspensory effect is global.

10. Which party is responsible for preparing and submitting the filing?

The mining company is responsible for preparing and submitting the filing.

11. What is the deadline to notify?

With regard to acquisition of shares, the deadline for notification differs based on the person/entity giving the notice.

First, there is no fixed notification deadline for a person (acquirer) intending to be or become a controller of a mining company. The only requirement under the law is for the person to ensure that written notice is made to the Minister of its intention to become a controller of the mining company prior to acquiring the interest in the company.

Second, any person (seller) who has become or ceased to be a controller of the mining company must notify the Minister in writing prior to or within 14 days of becoming or ceasing to be a controller of the company.

Finally, the mining company (target) is also required to give written notice to the Minister of the fact that a person has either become or ceased to be a controller within 14 days of becoming aware of the relevant facts.

There is no deadline to notify, for transfers mortgage or assignment of mineral rights. The law only requires that approval is sought prior to such transfer, mortgage or assignment.

12. What are the statutory deadlines within which the authority must take a decision? Please indicate if there are deadlines for a first phase review and a second phase in-depth review (or any other applicable review periods, such as a pre-review period). Please specify calendar days or working days.

First, the Minister has within two months after receiving the notice of intention to be or become a controller to issue a written no objection to the acquirer.

Please, note however that the period within which the Minister is expected to issue a no objection can be extended where the Minister requires any additional information or documents before deciding to serve a notice of objection or not. In such a case, the law requires that the time between the giving of the notice and the receipt of the information or documents is added to the period within which the Minister should have ordinarily served the objection or no objection on the acquirer.

Second, the Minister has 30 days within which to make a decision on an application to transfer, mortgage or assign a mineral right.

13. Is there a filing fee? If yes, when do filing fees have to be paid (e.g., pre-filing, post-decision)?

We understand from the Minerals Commission that a processing fee is assessed and levied on the acquirer. The processing fee payable is dependent on the type and number of license(s) or mining lease(s) held by the mining company.

14. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance?

The following statutory penalties are applicable for failure to notify the Minister:

- A person who fails to notify the Minister of its intention to be or become a controller or a person who fails to provide information or documents that the Minister may reasonably require after being served with a notice of no objection from the Minister when the person became a controller without the requisite approval of the Minister, will be liable on summary conviction to a fine not more than the Ghanian cedi equivalent of USD 20,000 or imprisonment for a term not more than three years or to both.

- The mining company will be liable to an administrative penalty of the Ghanian cedi equivalent of USD 1,000 payable to the Minerals Commission, if it fails to give written notice of the fact that a person has become or ceased to be a controller.

15. Which undertakings and/or individuals can be held liable for failure to notify?

The acquirer and the target can be held liable for failure to notify.

16. What is the focus of the screening, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The focus of the screening is public interest. The Minister may serve written notice the Minister's objection on a person, where the Minister considers on reasonable grounds that the public interest would be prejudiced by the person concerned becoming a controller of the mining company.

The Constitution of Ghana defines "public interest" as any right or advantage that benefits or is intended to benefit the people of Ghana as a whole.

The Ghanaian courts have held that the constitutional definition of public interest is not exhaustive. As such, what constitutes "public interest" is decided on a case-by-case basis. The court has also held that a matter would be deemed to be contrary to public interest even if it affects only a section of the populace.

17. What are the possible outcomes of the foreign investment review screening procedure?

The possible outcomes of the foreign investment review screening procedure are as follows:

- The Minister may issue a written notice of objection to the acquirer informing the acquirer that the Minister considers on reasonable grounds that the public interest would be prejudiced by the acquirer becoming a controller of the mining company.

- The Minister may issue a written notice to the acquirer informing the acquirer that there is no objection to the acquirer becoming a controller of the mining company.

Note that where the acquirer serves written notice of its intention to become a controller of a mining company on the Minister, the law permits the acquirer to assume that the Minister has no objection to the transaction where the Minister does not issue an objection to the transaction within two months of service of the notice on the Minister.

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Mali

Is there a foreign investment screening procedure which may apply to lithium investments?

We are not aware of any existing foreign investment screening which may apply to lithium investments.

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Mexico

1. Is there a foreign investment screening procedure which may apply to lithium investments?

No. Article 5 Bis of the Mexican Mining Law declares lithium as public utility and patrimony of the Mexican State. Therefore, no concessions, licenses, contracts, permits or authorizations can be granted in connection with lithium and its exploration, exploitation, benefit and use is reserved for the Mexican State. Likewise, it is established in Article 10 of the Mexican Mining Law that the exploration, exploitation, benefit and use of lithium will be carried out by the decentralized public agency determined by the Federal Executive Branch in terms of the applicable provisions. Such agency will manage and control the lithium economic value chains. It is also provided that the Mexican Geological Service will support said decentralized agency in connection with the location and recognition of geological areas where there are probable lithium reserves.

In this sense, foreign investments in lithium are prohibited.

2. If the response to question 1 is yes, who is the reviewing agency or decision maker?

In the context of lithium, since foreign investment is prohibited, there is no specific agency who is in charge of reviewing the screening procedure in lithium.

The Ministry of Economy, specifically the National Commission of Foreign Investments and the National Registry of Foreign Investments is the agency in charge for foreign investment screening procedures in other subjects where foreign investment is allowed.

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Peru

Is there a foreign investment screening procedure in this jurisdiction which may apply to lithium investments?

No, there is no foreign investment screening procedure in Peru which applies to lithium investments. Foreign investments are automatically authorized and are subject to registration with PROINVERSION only after they have been made.

The registration guarantees investors the right to freely transfer abroad, in freely converted foreign currency and without any authorization whatsoever, the full amount of their capital, dividends, profits, royalties and consideration for using and transferring technologies and elements of industrial property.

The **only restriction** on foreign investors (natural or juridical persons) under the Constitution, which include legal entities incorporated in Peru that have foreign shareholders, is that they cannot acquire or possess, within 50 kilometers of the border, **mines**, **lands**, forests, water, fuels and energy sources unless a supreme decree declares an exception due to public necessity or national interest.

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Spain

1. Is there a foreign investment screening procedure which may apply to lithium investments?

Yes. While there is no particular foreign investment screening procedure applicable exclusively to lithium, if the relevant transaction involving lithium meets the general requirements and falls under the foreign investment review regime, such transaction would need to obtain the corresponding foreign investment authorization.

In Spain the foreign investment review regime is limited to sectors that affect public order, national security and public health. These sectors include critical infrastructure, certain types of technologies and supply of critical inputs into such sectors. Lithium is therefore likely to fall within the scope of the regime in most cases.

2. If a foreign investment screening procedure is in place, who is the reviewing agency or decision-maker?

If the value of the investment in Spain is below EUR 5 million, the Directorate General on International Trade and Investments will grant the authorization. When the value of the investment is equal to or greater than EUR 5 million, the Council of Ministers will issue a prior administrative authorization.

Furthermore, foreign investments in Spain referred to activities directly related to national defense (which may include transactions in the lithium sector), may also require an authorization from the Council of Ministers at the proposal of the head of the Ministry of Defense and after a report from the Board of Foreign Investments.

Regarding a potential foreign investments filing, the recent practice is that two separate filings may be required, one for the Ministry of Economy and one for the Ministry of Defense, although the approval is resolved and notified by the same body (the Council of Ministers) in a maximum period of three months.

3. What types of transactions or events can trigger the application of the screening rules in your regime and are there any particularities that may apply in relation to these triggers (e.g., if a particular percentage share increment is relevant, the meaning of a relevant asset/business transfer in this jurisdiction that may trigger a filing).

a. Direct majority share transfer (in a domestic entity):

If it amounts to at least 10% of the corporate capital of the Spanish target or the investor acquires control over all or part of the Spanish target.

b. Indirect majority share transfer

c. Direct minority share transfer (in a domestic entity)

d. Indirect minority share transfer:

If it amounts to at least 10% of the corporate capital of the Spanish target or the investor acquires control over all or part of the Spanish target.

e. Asset/business transfer involving domestic assets/business:

Lithium may be considered as a domestic asset. Furthermore, it should be noted that lithium is starting to be considered as a strategic raw material by EU bodies.

4. If the triggering transactions or events were not listed under question 3 above, and other triggers, different to the above apply, what other transaction types or events will trigger a foreign investment review filing in this jurisdiction?

In Spain, the acquisition of control other than through the formal acquisition of voting rights can trigger a foreign investment review filing requirement.

"Control" may result from contracts, rights or any other means that, considering the circumstances of fact and law, confer the possibility of exercising decisive influence over all or part of a Spanish company and, in particular, through either of the following:

- Rights of ownership or use of all or part of the assets of a company
- Contracts, rights or any other means that allow decisive influence on the composition, deliberations or decisions of the company's bodies.

The following transactions fall outside the scope of the Foreign Direct Investments (hereinafter "FDI") screening mechanism:

- Internal reorganizations within a corporate group
- Acquisition of additional shares by investors who already hold at least a 10% stake in the Spanish company, if such acquisitions do not entail a change of control, i.e., if, as a result of the acquisition, the investor does not acquire joint or exclusive control.

Change of control occurs when the investor, as a result of the transaction, acquires joint or exclusive control. Although the existence of control will be assessed on a case-by-case basis, in general terms, the existence of control will be deemed where the investor acquires decisive influence on the composition, deliberations or decisions of the company's bodies or has veto rights over it.

Therefore, if a 10% investor acquires more voting rights, such that it has 49%, Spanish foreign investment screening laws will be applicable only if it implies a change of control (i.e., if it acquires decisive influence that it did not have before the investment). The same reasoning applies if the investor acquires a majority share.

Additionally, the **investors profile** will also be considered. Under Spanish applicable law, foreign investors are defined as: (i) non-EU/EFTA residents, and (ii) EU/EFTA residents beneficially owned by non-EU/EFTA residents. Even if the Target is not active in a strategic sector, if the non-EU/EFTA investor meets certain conditions, the transaction may be subject to the FDI screening mechanism. Said conditions are as follows:

a. Investors that a non-EU/EFTA government directly or indirectly controls, including state bodies, armed forces or sovereign wealth funds; the ability to exercise decisive influence as a result of an agreement, by owning shares or an interest in another person/entity (directly or indirectly), or by providing significant funding, is deemed to constitute "control" for these purposes.

b. Non-EU/EFTA investors that have already made an investment affecting national security, public order or public health in another EU Member State.

c. If there is a serious risk that the non-EU/EFTA investors engage in illegal or criminal activities affecting national security, public order or public health in Spain.

5. Is it necessary for the Target to have any presence in this jurisdiction?

Yes.

6. If it is necessary for the Target to have any presence in this jurisdiction, what would the establishment threshold(s) (e.g., a representative/sales office, branch, or stand-alone subsidiary) be?

The establishment threshold would be: parent company, subsidiary, branch and representative/sales office.

7. Are there any notification thresholds that trigger foreign investment review screening, other than the transactions or events noted in questions 3 or 4 above?

Spanish applicable law establishes a screening framework for investments made in companies whose activities are directly related to national defense, such as those that affect the industrial capabilities and areas of knowledge necessary to provide the equipment, systems and services that provide the armed forces with the necessary military capabilities, as well as those intended for production (understood as design and manufacturing), maintenance or trade of defense material in general.

The scope of investors subject to screening are investors residing outside of Spain and non-Spanish individuals residing in Spain, regardless of their nationality.

Exceptions with respect to transaction thresholds are as follows:

a. No screening is required for share acquisitions if the investor's stake in the target company is below 5%, if the investor lacks the right to appoint, directly or indirectly, any board member or member of the management body in general.

b. A conditional exception for investments between 5% and 10% of the target company's share capital: no prior authorization will be required if the investor serves a post-closing notice to the Directorate General on Weapons and Material and to the Directorate General on International Trade and Investments with a notarial document executed by the investor that includes commitments not to assign the voting rights to third parties, and not to serve as a member of the board or any applicable management bodies.

8. If there are value thresholds that would trigger foreign investment review screening (e.g., turnover thresholds; market share; asset value thresholds), please advise, who the undertakings concerned would be (i.e., who are the relevant parties for meeting the value thresholds) in an acquisition (e.g., (i) acquirer's group and (ii) the target only; (i) acquirer's group and (ii) the seller plus target; (i) acquirer's group; (ii) target; (iii) the seller separately)?

There are a number of exceptions foreseen for some specific sectors, however, none of them are applicable to lithium.

9. Is the foreign investment review filing obligation voluntary or mandatory in this jurisdiction (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction, event or sector involved, please specify accordingly and note how it varies, i.e., in which type(s) of transaction, event or sector(s) this would vary.

There is a mandatory filing obligation in Spain.

10. Is a foreign investment review filing suspensory (i.e., approval must be obtained prior to closing) in this jurisdiction? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

Yes. The suspensory effect is global.

11. Which party is responsible for preparing and submitting the foreign investment review filing?

The foreign investor is the party responsible for preparing and submitting the filing. Below are some considerations to examine:

- Private equity - if an investment is structured through investment, pension or employment funds, undertakings for collective investment in transferable securities or other similar investment structures, the entity deemed to be under the obligation to undergo the screening mechanism is the management entity, if the fund investors or beneficiaries do not legally exercise voting rights and do not have access to privileged information about the company. In other words, limited partners are not relevant for Spanish FDI purposes to the extent that their role is purely passive, and they lack access to privileged information.

- If multiple investors are involved in the same deal, a single FDI filing per investor will have to be submitted unless the investors plan to exercise joint control over the target, in which case one sole authorization request must be submitted by all the investors that will exercise joint control over the Spanish target.

12. What is the deadline to notify a foreign investment transaction in this jurisdiction?

There is no specific deadline to submit the request for authorization, but the authorization must have been granted prior to the implementation of the transaction. In other words, the transaction cannot close without having been cleared by the Spanish authority.

13. What are the statutory deadlines within which the authority must take a decision on a foreign investment review filing in this jurisdiction? Please indicate if there are different deadlines for a first phase review and a second or "in-depth" review phase (or any other applicable review period(s), such as a pre-review period). Please specify calendar days or working days.

Once the authorization request has been formally filed, the authority has three months to issue a decision. If no decision has been handed down when the legal term expires, the FDI authorization request is deemed to be rejected. However, the Spanish authority is entitled to request additional information and suspend the legal term until this information is submitted, extending the maximum period to issue its decision.

The law also envisages a voluntary consultation procedure, which serves to confirm whether doubtful transactions will be subject to a screening mechanism. Consultations must be answered within 30 business days.

14. Is there a filing fee for a foreign investment review filing in this jurisdiction? If yes, by when do filing fees have to be paid (e.g., paid pre-filing, post-decision, or at another time)?

No.

15. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance in this jurisdiction?

Gun jumping any screening mechanism (i.e., closing without the required authorization) will render the transaction invalid and without any legal effect until (and if) the required authorization is obtained. This means that the economic and voting rights of the foreign investor are suspended. Fines up to the value of the investment could also be applied.

16. Which undertakings and/or individuals can be held liable for failure to notify?

The seller cannot be liable for the buyer's failure to notify a transaction subject to prior screening. However, as one of the consequences for gun jumping may be the invalidity of the transaction, the seller is generally interested in complying with the law.

17. What is the focus of the foreign investment review screening in this jurisdiction, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The focus of the foreign investment review screening process is on the "public order, national security and public health" of Spain, other EU member states and projects and programs of European Union interest.

There are no particular substantive tests or abstract criteria that are used to evaluate whether the "public order, national security or public health" are affected. The fact that the Spanish target company falls under a critical sector to which a mandatory clearance requirement applies would typically indicate that the acquisition of the target would also have an impact on the "public order, national security and public health."

Regarding lithium in particular, this is likely to be considered as a critical sector and a strategic raw material with relevance both for industry and defense in Spain.

18. What are the possible outcomes of the foreign investment review screening procedure in this jurisdiction?

The possible outcomes of any foreign investment review in Spain are the following:

- Authorize the investment without conditions
- Authorize the investment subject to conditions
- Deny the authorization of the investment
- Archive the authorization request due to no-jurisdiction or withdrawal of the investor

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United States of America

1. Is there a foreign investment screening procedure in this jurisdiction which may apply to lithium investments?

Yes.

2. If a foreign investment screening procedure is in place, who is the reviewing agency or decision-maker?

The reviewing agency is the Committee on Foreign Investment in the United States (CFIUS), which is chaired by the US Department of the Treasury. CFIUS has authority to review transactions in any sector, including the mining sector.

3. What types of transactions or events can trigger the application of the screening rules in your regime?

a. Direct majority share transfer (in a domestic entity)

b. Indirect majority share transfer

c. Direct minority share transfer (in a domestic entity):

If the US business is a "TID US Business" and the foreign investor acquires voting/governance rights amounting to "control" or certain non-controlling rights, e.g., the right to nominate a board observer or board member. If the US business is not a TID US Business, CFIUS would have jurisdiction only if the foreign investor acquires "control". (A "TID US Business" is a US Business that develops, tests or produces "critical technologies," operates "critical infrastructure" or collects "sensitive personal data". The TID US Business assessment is technical and fact-specific. US mining operations do not typically meet "TID US Business" criteria, however, case-by-case assessment is recommended.)

d. Indirect minority share transfer:

Same as direct minority share transfer. Please see above.

e. Asset/business transfer involving domestic assets / business:

The acquisition of a "US business" will trigger CFIUS jurisdiction. The acquisition of assets could also trigger CFIUS jurisdiction if it involves the acquisition of a "US business" for CFIUS purposes. The acquisition of mining claims alone likely will not trigger CFIUS; however, the acquisition of mining claims and additional contracts or other rights could constitute a "US business" for CFIUS purposes.

f. Real estate transactions (e.g., land purchases):

If the land is located near certain US airports, maritime ports, or military installations.

g. Purely internal restructurings/reorganizations (i.e., where there is no change in ultimate control):

If intermediate foreign persons acquire certain interest/governance rights in the US business.

h. A transfer or sale of existing intellectual property rights could trigger CFIUS jurisdiction if other assets are also being transferred that together amount to a "US business."

i. The grant of an exclusive license of intellectual property right could trigger CFIUS jurisdiction if other assets are also being transferred that together amount to a "US business."

j. The grant of a non-exclusive license of intellectual property rights could trigger CFIUS jurisdiction if other assets are also being transferred that together amount to a "US business."

k. Establishment of a JV (with contribution of assets):

If the contributed assets amount to a "US business" and a foreign person would acquire "control" or certain non-controlling rights in those assets.

l. Bankruptcy:

If a foreign person were to acquire certain equity interest or governance rights in a bankrupt US business.

m. Lending transaction:

If a foreign person were to acquire certain equity interest or governance rights in a US business as a result of the lending transaction.

4. Is it necessary for the Target to have any presence in this jurisdiction?

Yes.

5. If it is necessary for the Target to have any presence in this jurisdiction, what would the establishment threshold (e.g. representative/sales office, branch, or stand-alone subsidiary) be?

For CFIUS to have jurisdiction over a transaction, there must be a "US Business." A US Business is defined as "any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States"; however, a collection of certain assets (e.g., mining claims, offtake agreements, processing facilities) could be a "US business" for CFIUS purposes. Whether or not there is a "US Business" is often a straightforward but fact-specific assessment.

6. Are there any notification thresholds for screening beyond the trigger events noted in question 3 (types of transactions or events that can trigger the application of the screening rules in your regime)? If the only criterion is that the deal falls within a certain sector please state that this is the case.

Yes. In addition to the trigger events noted in question 3 above, acquisitions of 25% voting interest in a "TID US Business" trigger a mandatory CFIUS filing if the investor is government-owned. US mining operations typically do not qualify as "TID US Businesses," but case-by-case assessment is recommended.

7. If there are value thresholds, please advise for an acquisition, who are the undertakings concerned (i.e., relevant parties for meeting the value thresholds) for an acquisition?

N/A.

8. Is a foreign investment review filing obligation voluntary or mandatory (and are there penalties for failure to notify or for implementing a transaction without notification or approval)?

There is both a voluntary and a mandatory filing obligation in the USA. CFIUS can impose penalties for failure to notify up to the value of the investment.

Voluntary filings

CFIUS filings may be made voluntarily for transactions that fall within CFIUS's jurisdiction. Certain transactions approved by CFIUS have "safe harbor" status and cannot be unwound by CFIUS in the future.

CFIUS may also proactively request a filing in connection with any transaction subject to its jurisdiction, which it can do at any time if a filing has not been made, including after the relevant deal closes.

Parties to transactions involving US mining operations might choose to submit a voluntary CFIUS filing based on an assessment of the risk of CFIUS reviewing the transaction and potentially intervening to block or unwind the transaction. Risk factors might include, for example, involvement of an investor from a sensitive jurisdiction (e.g., China), a vulnerable US supply chain (e.g., certain critical minerals), or supply of goods/services to US government agencies.

Mandatory filings

CFIUS filings must be made on a mandatory basis if certain criteria are met. There are two (overlapping) classes of mandatory pre-closing filings, as follows:

- Where a "government-affiliated investor" (e.g., a foreign investor 49% or more owned by a non-US government), or multiple government-affiliated investors, will acquire 25% or greater interest in a target "TID US Business;" and

- Where any foreign person acquires control or certain other rights in a target "US business" that develops, tests, or produces "critical technologies," (a fact-specific, technical determination), and a US regulatory authorization (e.g., a US export control license) would be required prior to exporting the target US business's "critical technologies" to the investor's principal place of business.

9. Is a foreign investment review filing suspensory (i.e., approval must be obtained prior to closing)? If yes, please indicate whether the suspensory effect of a foreign investment review filing is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

Yes. Mandatory filings are suspensory and must be submitted at least 30 days prior to closing. The suspensory effect relates to the domestic (US) part of the transaction.

10. Which party is responsible for preparing and submitting the foreign investment review filing?

Both parties to a transaction are responsible for preparing and submitting filings to CFIUS.

11. What is the deadline to notify a foreign investment?

If a mandatory CFIUS filing is required, the deadline to submit a filing to CFIUS is 30 days prior to closing.

12. What are the statutory deadlines within which the relevant authority must take a decision about the foreign investment in this jurisdiction? Please indicate if there are deadlines for a first-phase review and a second-phase in-depth review (or any other applicable review periods, such as a "pre-review" period). Please specify calendar days or working days.

CFIUS filings can be made in the form of either a "declaration" or a "full notice." Declarations have shorter review periods and can lead to earlier approval but can also be followed by a request from CFIUS for a full notice, prolonging the review timeline. The decision of whether to proceed with a "declaration" or a "full notice" should be made with advice from CFIUS counsel following careful review of the facts of a particular transaction.

The timelines for each filing format are as follows:

Declarations:

- Draft Declaration and Acceptance of Declaration by CFIUS — Typically several weeks

- Declaration — 30 calendar days

Full Notice:

- Review of Draft Filing and Issuance of Initial Comments — Typically several weeks
- Review of Final Filing and Acceptance of Filing by CFIUS — Typically several weeks
- Review — 45 calendar dayss
- Investigation (following Review, at CFIUS's discretion) — 45 calendar days
- Exceptional Extension of Investigation (following Investigation, at CFIUS's discretion) — 15 calendar days

13. Is there a filing fee to make a foreign investment review filing in your jurisdiction? If yes, please elaborate on how much the current filing fee is e.g. is it a set fee or based on transaction value. By when does the filing fee (s) have to be paid (e.g., pre-filing, post-decision)?

Yes. CFIUS requires the payment of filing fees for filings submitted to it. CFIUS filing fees are assessed on a sliding scale between USD 0 and USD 300,000, depending on the value of the transaction, as follows:

- Transaction value less than USD 500,000 = USD 0 (zero) fee
- Transaction value equal to or greater than USD 500,000 but less than USD 5 million = USD 750 fee
- Transaction value equal to or greater than USD 5 million but less than USD 50 million = USD 7,500 fee
- Transaction value equal to or greater than USD 50 million but less than USD 250 million = USD 75,000 fee
- Transaction value equal to or greater than USD 250 million but less than USD 750 million = USD 150,000 fee
- Transaction value greater than USD 750 million = USD 300,000 fee.

The filing fee must be paid pre-filing: Filing fees must be paid in parallel to a filing being submitted, and CFIUS will not commence review of a filing until the filing fee is made.

14. What are the statutory penalties for failure to notify a foreign investment or for closing the transaction without a foreign investment review clearance?

Civil penalties for failing to make a mandatory filing can run up to the value of the investment.

15. Which undertakings and/or individuals can be held liable for failure to notify a foreign investment?

Both the investor and target can be held liable for failure to make a mandatory filing.

16. What is the focus of the foreign investment screening in this jurisdiction, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The primary focus is national security, which is interpreted very broadly by CFIUS.

17. What are the possible outcomes of the foreign investment review screening procedure?

The possible outcomes are as follows:

- Clearance
- Clearance subject to conditions/mitigation measures (for example, a requirement to limit physical or virtual access to US nationals; a requirement to continue supplying certain products to the US government)
- Prohibition of the transaction or compelled divestiture
- In the case of a declaration filing, no formal conclusion (and no request for follow-up)

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Zimbabwe

1. Is there a foreign investment screening procedure which may apply to lithium investments?

- There is a foreign investment screening procedure in Zimbabwe and it applies to lithium investments. A foreign investor is required to obtain an investment licence issued by the Zimbabwe Investment and Development Agency (ZIDA).

- An application for an investment licence is made to the ZIDA. Approval from that authority will encompass the necessary exchange control approval for foreign ownership of shares in a Zimbabwean Company. The approval also assists in the granting, where necessary, of work permits for non-residents to work in Zimbabwe and to enable the remittance of loan repayments and dividends by foreign investors.

In addition, it should be noted that lithium has been declared to be a Strategic Mineral under the Finance Act 13 of 2023.

Accordingly in respect of new mines, lithium may only be mined where the entity mining the same holds a "Special Mining Lease" or "Special Grant" and can demonstrate the capacity and intention to invest no less than USD 100 million.

Before obtaining a Special Mining Lease or Special Grant or the renewal of the same it is required to enter into an agreement with the Minister of Mines and Mining Development in respect of the state having a defined interest in the company exploiting the mineral.

Further no tribute may be granted to mine lithium without the consent of the Minister of Mines and Mineral Development.

2. What types of transactions or events can trigger the application of the screening rules in your regime?

- direct majority share transfer (in a domestic entity): (applicable to foreign entity)
- direct minority share transfer (in a domestic entity)
- indirect minority share transfer
- asset/business transfer involving domestic assets/business: (business assets only)
- real estate transactions (e.g., land purchases)
- establishment of a full-functional JV (without contribution of assets): (if you are engaging into a JV with the government entity, screening may be applicable)
- establishment of a non-full-functional JV (without the contribution of assets)
- a transfer or sale of existing intellectual property rights
- the grant of an exclusive license of intellectual property rights
- the grant of a non-exclusive license of intellectual property rights

3. Please specify any particularities that may apply in relation to the above (e.g., if a particular % share increment is relevant, the meaning of a relevant

asset/business transfer in your jurisdiction that may trigger a filing). Please also add any other transaction types or circumstances that will trigger a filing in your jurisdiction.

- An investor who obtains approval to hold shares in a Zimbabwean company may not transfer or sell such shares to another non-resident without first obtaining ZIDA/Reserve Bank of Zimbabwe Approval for such sale or transfer.

- An investor who obtains an investment licence is prohibited, except with the prior approval of the ZIDA, to assign, cede or otherwise transfer their investment licence/ interest therein to any other person.

4. Is it necessary for the Target to have any presence in your jurisdiction? If the answer is yes, please advise what would be the establishment threshold (e.g., rep/sales office, branch, or stand-alone subsidiary). If the answer is no, please explain on what basis the authority takes jurisdiction.

- There is no requirement for an investor to have an office within Zimbabwe.

- The Zimbabwean company in which the Investor would hold shares is required to have a Zimbabwe Resident Director and Company Secretary. They may be the same person.

5. Are there any notification thresholds for screening beyond the trigger events noted in question 4? If the only criterion is that the deal falls within a certain sector please state that this is the case. If there are value thresholds, please advise for an acquisition, who are the undertakings concerned (i.e., relevant parties for meeting the value thresholds) for an acquisition (e.g., (i) acquirer's group and (ii) target only; (i) acquirer's group and (ii) seller plus target; (i) acquirer's group; (ii) target; (iii) seller separately)?

In terms of the Zimbabwe Investment Development Agency Act and the Statutory Regulations, there is no currently no value threshold with regards to acquisitions. Any acquisition of shares in a Zimbabwean company by a non-resident requires ZIDA or Reserve Bank of Zimbabwe Approval.

6. Is a filing obligation voluntary or mandatory (i.e., are there penalties for failure to notify or for implementing a transaction without notification or approval)? If the answer varies depending on the type of transaction or sector involved, please specify accordingly.

An Investor requires an investment licence or approval from the Exchange Control Division of the Reserve Bank of Zimbabwe in order to hold shares in a Zimbabwean Company.

Without such approval the share ownership is not valid.

7. Is filing suspensory (i.e., approval must be obtained prior to closing)? If yes, please indicate whether the suspensory effect is global or national (i.e., is it possible to ring-fence the domestic part of the transaction to close early in other countries)?

Closing to be subject to issue of the investment licence or Reserve Bank Approval. This is a standard condition precedent.

8. Which party is responsible for preparing and submitting the filing?

The local Zimbabwean Company applies for the investment licence.

9. What is the deadline to notify?

The investment licence is required before shares can be issued to the foreign investor.

10. Is there a filing fee? If the answer is yes, when do filing fees have to be paid (e.g., pre-filing, post-decision)?

The ZIDA application fee is USD 500, the licence fee payable on approval is USD 4,500. The Licence is subject to renewal usually at three yearly intervals. The renewal fee is USD 3,000. The fees may be subject to change.

11. What are the statutory penalties for failure to notify or for closing the transaction without a foreign investment review clearance?

The shares in the Zimbabwean company cannot be issued without an investment licence or Reserve Bank of Zimbabwe Approval.

12. Which undertakings and/or individuals can be held liable for failure to notify?

The Board of the Zimbabwean Company cannot authorise the issue of shares to a non-resident investor without the investment licence/Reserve Bank approval having been obtained.

13. What is the focus of the screening, e.g., national security, economic welfare, etc.? Is there a particular substantive test or points on which the regulator needs to be satisfied?

The focus of the screening is to establish the socio-economic benefit that the investment will provide to the country as well as the investing entity. The following are taken into account by the ZIDA in approving or rejecting an investment licence in Zimbabwe:

a. the extent to which skills and technology will be transferred for the benefit of Zimbabwe and its people;

b. the extent to which the proposed investment will lead to the creation of employment opportunities and the development of human resources;

c. the extent to which local raw materials will be utilised and beneficiated;

d. the value of the convertible foreign currency transferred to Zimbabwe in connection with the project;

e. the impact the proposed investment is likely to have on the environment and, where necessary, the measures proposed to deal with any adverse environmental consequences;

f. the impact the investment is likely to have on existing industries in the economy; and

g. the possibility of transfer of technology.

14. What are the possible outcomes of the foreign investment review screening procedure?

The outcomes are subject to compliance and satisfaction of the "screening requirements". Statistically, foreign investors have been dominating the local mergers and acquisitions scene, with 73% of all approved mergers since June 2017 concluded by foreign parties. Section 13 of the Zimbabwe Development Agency Act further consolidates the considerations of the ZIDA in reviewing applications by providing that foreign investors and their investments shall be accorded no less favourable treatment to domestic investors. There

is to be fair and equitable treatment of all investors therefore it is possible for a foreign investor to invest in Zimbabwe provided they have met the requisite requirements.

In the event that the application fails to meet the specified requirement, the application will be rejected in terms of Section 22 (3) of the Zimbabwe Investment and Development Agency Act and an inquiry can be conducted with the responsible authority to clarify on the non-compliance to be rectified.

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