

LATVIA



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1.	Relevant legislation (foreign investment legislation in force)
<p>Primarily, National Security Law and relevant government regulations issued based on the National Security Law.</p> <p>National Security Law, translation into English available at https://likumi.lv/ta/en/en/id/14011</p> <p>'The Procedure for Preventing Threats to Companies, Associations, and Foundations of Importance to National Security' (Cabinet of Ministers regulation No.311 of June 20, 2023, available only in Latvian at https://likumi.lv/ta/id/343004-nacionalajai-drosibai-nozimigu-komerssabiedribu-biedribu-un-nodibinajumuapdraudejuma-noversanas-kartiba</p> <p>The Ministry of Economics is responsible for screening of foreign direct investments. National security authorities are involved in the process, whereas authorisation and other decisions with respect to foreign direct investments are taken by the government (the Cabinet of Ministers).</p>	
2.	Relevant authority (foreign investment regulator)
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3.	Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)
<p>The law does not provide a definition of a foreign investor. Authorization rules are generally applicable to any investor or investors contemplating transactions falling within the scope of transactions specified in the National Security Law, which require authorization for certain transactions on national security grounds. The only exception to this principle is with regards to loan transactions, which are caught only if the lender falls into either of the following categories: (i) a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD) or (ii) a legal entity with an ultimate beneficial owner who is a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD).</p> <p>The following transactions/thresholds are caught:</p> <p><u>with respect to companies:</u></p> <ul style="list-style-type: none"> • acquisition of a qualifying holding in the company ("qualifying holding" to be understood as direct or indirect holding of 10% or more of share capital or voting shares or such 	

holding that enables to exercise significant influence over the financial and operational policy of the company),

- acquisition of dominant influence over the company (“dominant influence” to be understood as arising out of corporate group agreement by which the company subordinates its management to another company and/or undertakes to transfer its profits to this other company or when a shareholder has either of the following rights or any of the following circumstances exist: (i) the majority of voting rights in the company; (ii) the right in the capacity of a shareholder to appoint or remove the majority of the members of the company's executive body or supervisory body; (iii) the shareholder in its capacity has appointed the majority of members of the company's executive body or supervisory body during the reporting year; (iv) as per agreement with other shareholders the shareholder alone controls the majority of voting rights in the company).
- transfer of an undertaking which encompasses assets used in the sectors covered by foreign direct investment rules;
- retaining the status of a shareholder or the right to exercise an indirect holding, if the ultimate beneficial owner changes or, if the ultimate beneficial owner cannot be ascertained when there is a change of the last legal person in the chain of control which can be identified as having an influence in a company (hereinafter – the acquirer of indirect influence);
- the receipt of loan funds in excess of 10% of assets, provided that the loan is granted either by (i) a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD) or (ii) a legal entity with an ultimate beneficial owner who is a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD);

with respect to partnerships and associations:

- the admission of a new partner or member;
- retention of a partnership or membership status in case of change of the ultimate beneficial owner or the acquirer of indirect influence;
- the receipt of loan funds in excess of 10% of assets, provided that the loan is granted by (i) a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD) or (ii) a legal entity with an ultimate beneficial owner who is a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD);
- acquisition of influence in a company registered in Latvia which is a partner in a partnership or member of an association;

with respect to foundations:

- receipt of loan funds in excess of 10% of assets, provided that the loan is granted either by (i) a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD) or (ii) a legal entity with an ultimate beneficial owner who is a foreign national (excluding those from a member state of the EU, EFTA, NATO, or OECD).

4.

Parties to be included in the foreign investment assessment (notifying parties and protected entities)

Foreign investment assessment may involve notifying parties and protected entities.

It is the obligation on the following parties to apply for the respective authorisation to the Ministry of Economics:

- the acquirer of critical infrastructure;
- the acquirer of qualifying holding;
- the acquirer of dominant influence;
- person exercising indirect influence;

- the prospective partner or member of the partnership or association

It is an obligation of protected entity to submit an application for the authorisation to the Ministry of Economics:

- in the event of the transfer of undertaking (which encompasses assets used in the sectors covered by foreign direct investment rules), or
- for receiving the loan funds.

5.

Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)

Foreign investment regime control is applicable with respect to companies, partnerships, associations, and foundations registered in the Republic of Latvia which own or possess critical infrastructure or satisfy at least one of the following criteria:

- it is an electronic communication merchant with significant market power, which is subject to tariff regulation and cost calculation obligations as per procedure provided for in the Law on Electronic Communications;
- it is an audio electronic media whose programme coverage area by technical means of terrestrial broadcasting is Latvia or at least 60 % of its territory according to the broadcasting licence issued by the National Electronic Media Council, or is an audiovisual electronic media whose programme coverage area by technical means of terrestrial broadcasting is Latvia or at least 95 % of its territory according to the broadcasting licence issued by the National Electronic Media Council;
- it has received a licence in the Republic of Latvia for the transmission, distribution, storage of natural gas or owns a liquefied natural gas facility connected to the transmission or distribution system;
- it is a producer of electric power or heat with an effective installed capacity exceeding 50 megawatts;
- it is a thermal energy transmission and distribution operator which owns thermal networks of at least 100 kilometres in length;
- it has received a licence for electric power transmission in the Republic of Latvia;
- it is the owner of at least 10 000 hectares of forest land in the Republic of Latvia;
- it is the owner of at least 4 000 hectares of agricultural land in the Republic of Latvia;
- it has received a special permit (licence) for commercial activities with goods of strategic importance or a military manufacturer's certificate issued by the Ministry of Defence and has existing strategic partnership agreement in force with the Ministry of Defence;
- it has been, within the last 2 years, a manufacturer and developer of goods listed in Annex I to Regulation (EU) 2021/821, exporting such dual-use items to countries other than Member States of the European Union, the United States, Canada, Australia, New Zealand, Norway, Switzerland, Japan, the United Kingdom, Iceland and Liechtenstein;
- it has access to personal data of voters, as well as to personal data of candidates for deputies, which are not to be published in accordance with the law;
- it processes datasets contained in the systems of national critical infrastructure, except when it is carried out by financial market participants;
- it is a company or partnership which produces or develops goods listed in Annex I to Regulation (EU) 2021/821 of 20 May 2021 establishing a Union regime for the control of exports, brokering, technical assistance, transit and transport of dual-use items or produces or develops technologies, such as in the field of artificial intelligence, robotics, intelligent and autonomous mobility, cyber security, energy storage, quantum technology, nuclear technology, nanotechnology, biotechnology and which has been designated by the Cabinet of Ministers as a commercial company of national security importance on the basis of an opinion of the national security authority.

6.	Exceptions
<p>The authorization of the Cabinet of Ministers shall not be required in the following cases:</p> <ul style="list-style-type: none"> • when shares are acquired by the company itself, as provided for by law; • when the company is wholly owned by the state or when shares are held by the state in accordance with the law regulating management of state-owned companies and holding of shares by the state; • when an undertaking or shares transfer into the ownership of a public authority or a company wholly owned by the state, or a company in which all the shares or voting rights are held by more than one public authority; • when shares are returned to the rightful holder pursuant to the Criminal Procedure Law; • upon confiscation of shares pursuant to the Criminal Procedure Law; • when loan funds are received by a company which is wholly owned by a public authority or a company in which all the shares or voting rights are held by more than one public authority. 	
7.	Notification / review type (e.g. mandatory, pre-closing, suspensory)
<p>Notification to the Ministry of Economics is mandatory. The focus of the review is on evaluating the potential national security implications of a foreign investment. The review process involves preparation of reports on the proposed investment by national security authorities.</p> <p>The review is generally pre-closing review, except in the following situations:</p> <ul style="list-style-type: none"> • in case of the change of the ultimate beneficial owner or change of the acquirer of indirect influence of: (a) shareholder of a company, (b) partner in a partnership or (c) member of an association; • for loan agreement, the review is after the loan agreement has been entered into though before the disbursement and receipt of any loan funds 	
8.	Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)
<p>No third parties are involved. The review is an administrative process between the applicant and the public authority.</p>	
9.	Filing fee
<p>No filing fees exist.</p>	
10.	Submission deadline / stand-still obligation
<p>The application for clearance shall be submitted before:</p> <ul style="list-style-type: none"> • acquisition of a qualifying holding; • acquisition of dominant influence; • the transfer of an undertaking; • receipt of loan funds under the loan agreement; • becoming a partner in a partnership or member in an association. <p>Stand-still obligation is expressed indirectly through legal invalidity of actions taken in the absence of authorisation.</p>	
11.	Availability of pre-notification/informal consultation

No formal or informal pre-notification procedure is available.	
12.	Scope of information / documents required for filing
Detailed rules regarding information to be submitted are specified in the Cabinet of Ministers regulations. The type of information to be submitted primarily concerns the identity, corporate structure, chain of control of the investor as well as ultimate beneficial owners or other persons exercising influence over the prospective investor.	
13.	Proceedings timetable (timing for review)
The decision of the Cabinet of Ministers shall be taken within one month from the date of receipt of the application. This time limit may be extended to four months.	
14.	Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)
The outcome of the review process may result in unconditional clearance, conditional authorisation or denial of authorisation.	
15.	Publicity of the decision and confidentiality of the information provided.
The decisions are not published. Applicants may protect the confidentiality of the provided information based on the general provisions of the Trade Secrets Protection Law. According to these provisions, the holder of a trade secret may indicate that certain information constitutes a trade secret when providing it to a public authority and shall inform the authority of the need to ensure the protection of the trade secret.	
16.	Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)
<p>The addressee of the decision by the Cabinet of Ministers may appeal the decision to the Administrative Regional Court within one month from the day it enters into force. An appeal does not suspend the operation of the decision. The court shall hear the case as a court of first instance. The judgment of the Administrative Regional Court may be appealed by filing a cassation complaint.</p> <p>Any grounds that can serve as a basis for appealing administrative acts in principle may be the basis for an appeal. In deciding on granting or denying authorization for foreign investment, the Cabinet of Ministers shall consider the report of national security authorities, assess the restriction of a person's rights, its proportionality with the interests of national security, and compliance with the principle of legitimate expectations. Failure to make proper assessment of these aspects may potentially serve as the ground for an appeal.</p>	
17.	Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)
There are no specific administrative fines or criminal sanctions for failure to notify in violation of foreign investment control rules, however the failure to notify may attract administrative penalties under the legal norm of general applicability which sanctions failure to provide information, provision of inadequate information or provision of false information to a public authority.	

Pursuant to the National Security Law, in the event of unauthorised acquisitions, memberships in the partnerships or disbursements of loans the Cabinet of Ministers shall adopt decisions ordering:

- divestment of shares or discontinuation of indirect holdings and the prohibition on the exercise of voting rights until the fulfilment of these obligations.
- withdrawal from partnerships and the prohibition of representation and management of the partnerships until the fulfilment of these obligations.
- termination of loan agreement.

The civil law consequences for failure to receive authorization, generally result in the legal nullity of actions or transactions in the territory of Latvia made without authorization:

- the legal nullity in the territory of Latvia of transaction underlying acquisition of qualifying holding or dominant influence.
- the legal nullity of the transfer of undertaking.
- the legal nullity in the territory of Latvia of transaction underlying granting and receipt of the loan funds.
- the legal nullity of the resolutions of the general meeting of shareholders if they have been voted on by such shareholders whose participation (incl., in case of change of ultimate beneficial owner or the last legal person in the chain of control) have not been authorised by the Cabinet of Ministers.
- the legal nullity of any action of the partner of a partnership with respect to representation of the partnership and its management.

18.

Other national security review distinct from FDI rules

There are some industry specific national security reviews in electronic media, energy, and the strategic goods industries.

The ultimate beneficiaries of electronic media are vetted with respect to the threat to national security for the purposes of broadcasting authorization, retransmission authorization, or authorization to provide on-demand services under the Electronic Media Law.

Pursuant to the Energy Law, the identity of the ultimate beneficial owner of the buyer entity is vetted with respect to the threat to national security in transactions of acquisition of:

- more than 1% of shares of the owner of the unified natural gas transmission and storage system operator or the operator of the unified natural gas transmission and storage system operator, and
- the natural gas transmission system or any part thereof, or the land plots on which the buildings, structures, and technological equipment necessary for the operation of the underground natural gas storage, as well as the technological equipment supporting the operation of the underground natural gas storage or buffer gas, are located.

According to the Circulation of Strategic Goods Law, the granting of certain licenses for the handling of goods of Strategic Significance is subject to verification by national security authorities of the company, its employees, and managers.

19.

Significant legislative/regulatory developments in the past year and possible proposals for reform

In 2022, significant amendments to the National Security Law were enacted, impacting the foreign direct investment regime. These amendments became effective on 14 November 2022. Notable changes include the expansion of the foreign direct investment regime to encompass loan transactions. Moreover, partnerships and associations have been more comprehensively included as potential targets of foreign direct investments. The amendments also introduced specific rules for situations where the ultimate beneficial owner

cannot be determined. In cases involving a change in the last legal person in the chain of control, akin to a change in the ultimate beneficial owner, analogous treatment is prescribed. Additionally, the amendments specify that, for the purpose of safeguarding national security, authorization for the acquisition of a qualified holding or dominant influence can be conditional.

Currently, there are no proposals for reform.

20.

Helpful links

No links dedicated to the foreign investment control are available