

LITHUANIA



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<b>1.</b>	<b>Relevant legislation (foreign investment legislation in force)</b>
	<ul style="list-style-type: none"> <li>• <a href="#">Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.</a></li> <li>• <a href="#">Law on the Protection of Objects of Importance to Ensuring National Security of the Republic of Lithuania</a> (the “<b>Law on National Security</b>”);</li> <li>• <a href="#">The description of the procedure of the Coordinating Commission for the Protection of Objects of National Security Importance</a> (the “<b>Commission’s Rules of Procedure</b>”).</li> </ul>
<b>2.</b>	<b>Relevant authority (foreign investment regulator)</b>
	<p>The Government of the Republic of Lithuania (the “<b>Government</b>”) is in charge of applying the FDI rules. The supervision of FDI review is assigned to the Commission for Coordination of Protection of Objects of Importance to Ensuring National Security (the “<b>Commission</b>”). The Commission is responsible for screening investors in Lithuania.</p>
<b>3.</b>	<b>Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)</b>
	<p>The following economic sectors are considered to be strategically important for national security (Article 6 of the Law on National Security):</p> <ul style="list-style-type: none"> <li>• energy;</li> <li>• transport;</li> <li>• information technology and telecommunications, other high technologies;</li> <li>• finance and credit;</li> <li>• military equipment.</li> </ul>
<b>4.</b>	<b>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)</b>
	<p><u>Investor definition</u></p> <p>According to the Law on National Security, investors in Lithuania may be natural persons, private and public legal persons and other organizations not posing a threat to national security interests (Article 10(1) of the Law on National Security).</p> <p>Non-Lithuanian investors are divided into two separate categories:</p>

- **Foreign investor** – a citizen of a Member State of the European Union (EU), the North Atlantic Treaty Organization (NATO), the European Free Trade Association (EFTA) and / or the Organisation for Economic Co-operation and Development (OECD), or a legal person or organisation established in these states, except for the cases where 1/4 or more of the voting rights at the meeting of participants of such a legal person or another organisation are held by a third country, legal persons under its control, or its citizens (Article 2(13) of the Law on National Security);
- **Third country investor** – a third-country national or a legal person or another organisation established in a third country as well as a legal person or another organisation established in any EU Member State or in a member of NATO, the EFTA and/or the OECD in which 1/4 or more of the voting rights at the meeting of its participants are held by the third country, legal persons controlled by it or its citizens. Third country means a state other than any EU Member State or a member of NATO, the EFTA and/or the OECD.

#### Assets subject to assessment

The enterprises related to ensuring national security are categorized in:

- **Category I enterprises** – the state enterprises, municipal enterprises, public limited liability companies or private limited liability companies listed in the Annex of the Law on National Security which are of strategic importance to national security interests and whose shares carrying **all the votes** at the general meeting of shareholders are held by the State, a municipality or a state-owned company;
- **Category II enterprises** – the public limited liability companies or private limited liability companies listed in the Annex of the Law on National Security, which are of strategic importance to national security interests and whose **at least 2/3 of votes** at the general meeting of shareholders are held by the State, a municipality or a state-owned company;
- **Category III enterprises** – the public limited liability companies or private limited liability companies listed in the Annex of the Law on National Security are of strategic importance to national security interests and whose shares carrying **less than 2/3 of votes** at the general meeting of shareholders are held by the State, a municipality or a state-owned company or the shares whereof are not held by the legal persons mentioned.

#### Investment threshold

The categorization of the enterprises related to ensuring national security leads to different investment thresholds. An investor conforming to national security interests, acting independently or jointly with other persons acting in concert, may acquire shares which, together with the shareholding held by him or together with the shareholding held by other persons acting in concert, carry:

- **Investing in Category I enterprises** – 1/4 or more of votes or convertible debentures (upon converting them into shares).
- **Investing in Category II enterprises** – 1/4 or more of votes or convertible debentures (upon converting them into shares).
- **Investing in Category III enterprises** – 1/3 or more of votes or convertible debentures (upon converting them into shares).

Therefore, the screening of investors is triggered by the acquisition of at least 25 per cent or 33.33 per cent of voting rights depending on the exact special category of enterprise to which the target company belongs.

#### Screening procedure

Investor screening must be carried out in the following cases (Article 12(1) of the Law on National Security):

- when the investor transfers facilities or property critical for national security or these facilities or property are pledged or mortgaged to secure the investor's claims;
- when the investor acquires the respective portions of shares in enterprises critical for national security or when the investor concludes agreements on the transfer of the voting right and acquires the right to exercise non-property rights of an investor attached to the respective portion of shares;
- when the investor acquires the respective portions of convertible debentures in enterprises critical for national security;
- when the investor transfers the property specified in the security plan of an enterprise critical for national security;
- when the property specified in the security plan of an enterprise critical for national security is pledged or mortgaged to secure the investor's claims.

Turnover threshold

There is an obligations for enterprises of importance to ensuring national security to notify the Commission of the transactions intended to be concluded or substantial changes in the transactions already concluded where the value of the transaction exceeds **10 per cent of the enterprise's annual income** for the preceding financial year.

Enterprises of importance to ensuring national security are also obliged to notify the Commission of intended transactions referred in the Law of the Republic of Lithuania on the Necessary Measures for Protection against Threats from Unsafe Nuclear Power Plants of Third Countries, or amendments to the already concluded transactions (with the exception of changes of a purely technical/editorial nature), **irrespective of the transaction's value.**

**5.**

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

Before performing the investment actions, investors or the owners of the shares and convertible debentures of enterprises of importance to ensuring national security must submit to the Commission the documents and relevant information needed for the transaction verification.

Respectively, the investment actions must not be performed until the Commissions gives a verification of such transaction. Additionally, the controlling person of the shareholder may not change, until a decision on the investor is adopted confirming his conformity to national security interests.

The screening additionally may be initiated by (Article 12(4) of the Law on National Security):

- the Government;
- a minister;
- the Commission;
- institutions in charge of ensuring national security;
- the Bank of Lithuania;
- the Radio and Television Commission of Lithuania;
- the National Energy Regulatory Council;
- a national or municipal executive body in charge of managing the state-owned or municipality-owned shares of a public or private limited liability company, where that body exercises the rights and duties of the owner of a state or municipal enterprise;
- an executive body of the municipality in the protection zone where the investor acquires or intends to acquire property and carries out or is about to carry out the activities;
- an enterprise critical for national security.

Where the specified entities apply to the Commission for launching an investor screening, the Commission shall notify the investor about the envisaged screening, and specify that the

<p>investor must, within ten days from the receipt of such notification, submit to the Commission the documents and information specified in the Commission's Rules of Procedure.</p> <p>Enterprises explicitly listed in the Law on National Security that are deemed crucial to national security interests of Lithuania are divided into three categories, as outlined above. These categories include certain companies where the state or municipality has an ownership interest and several other companies where the state or municipality does not have an ownership interest, but which are nevertheless, for other reasons, deemed to be of strategic importance to the national security interests of Lithuania.</p>	
<b>6.</b>	<b>Exceptions.</b>
<p>Investors from the Republic of Lithuania or foreign investors who carry out long-term activities in an EU Member State, or in a member country of NATO, the OECD or the EFTA and who have experience in the relevant field shall be considered to conform to national security interests and <b>shall be free from screening, except</b> where an investor, the country in which the investor is established or by which the investor is controlled, or a third country with which such an investor is associated, acts in a way that produces risk factors and also except for the cases where the screening is carried out on the initiative of the entities which have evidence that investor poses a risk or fails to meet the national security interests (Article 10 of the Law on National Security).</p>	
<b>7.</b>	<b>Notification / review type (e.g. mandatory, pre-closing, suspensory)</b>
<p>The entities carry out a screening if it is found that the activities planned or carried out by such an investor, or the decisions taken by the organs of the established legal entity, may pose a risk or a threat to national security interests (Article 12(3) of the Law on National Security).</p> <p>Essentially:</p> <ul style="list-style-type: none"> <li>• all transactions are covered by the FDI regime if the legal person (target) meets the criteria of national importance described in the Law on National Security.</li> <li>• the threshold triggering the screening of the investor depends on the type of target company in question.</li> <li>• enterprises explicitly listed in the Law that are deemed of utmost importance to national security interests of Lithuania are divided into three categories provided earlier.</li> </ul> <p>In such cases the screening is mandatory and must be performed prior to the closing of the transaction.</p>	
<b>8.</b>	<b>Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)</b>
<p>The procedure for third parties to intervene in the FDI process is not defined. Considering that the FDI process is not public, it is unlikely that third parties would be able to intervene. The Commission itself might request third parties to provide relevant information. However, the intervention of third parties is limited to the provision of such requested information.</p>	
<b>9.</b>	<b>Filing fee</b>
<p>No filling fees are applied.</p>	
<b>10.</b>	<b>Submission deadline / stand-still obligation</b>
<p>The submission must be performed before the investment and / or transaction is made. Respectively, the investment actions must not be performed until the Commissions gives a</p>	

verification of such transaction. Additionally, the controlling person of the shareholder may not change, until a decision on the investor is adopted confirming his conformity to national security interests (Article 12(2) of the Law on National Security).	
<b>11.</b>	<b>Availability of pre-notification / informal consultation</b>
Not defined formally, but it is always possible to apply to the Commission with a request for consultation / preliminary assessment whether the transaction falls within the FDI screening regime.	
<b>12.</b>	<b>Scope of information / documents required for filing</b>
<p>The following documents must be provided to the Commission:</p> <ul style="list-style-type: none"> <li>• a list of the investor's shareholders;</li> <li>• voting agreements and/or agreements for the transfer of voting rights (if any);</li> <li>• data on all persons acting in concert (name of a legal person; name and surname of a natural person; and basis for contractual operation);</li> <li>• copies of the documents of incorporation of the legal person (and, if necessary, also of persons acting in concert) certified by the general manager of the legal person, an extended extract from the Register of Legal Entities with history (if the investor is a legal person) and/or copies of identity documents (if the investor is a natural person);</li> <li>• if the investor is a legal person, copies of the documents of incorporation (if the final owners are legal persons) and/or copies of identity documents (if those owners are natural persons) of its (if necessary, also persons acting in concert) final owners who directly and/or indirectly control the investor;</li> <li>• if the application is submitted by the investor's representative, a document confirming the authorization of the representative; and</li> <li>• notice containing additional required data (e.g., the details of the investor (name, surname, citizenship, place of residence or entity name, legal entity code, country of establishment and business address), planned/ongoing activities, etc.).</li> </ul>	
<b>13.</b>	<b>Proceedings timetable (timing for review)</b>
<p>On receipt of the initial notice of the FDI together with all relevant information, the Commission shall contact the relevant authorities no later than the following working day which provides conclusions on the investor's compatibility with national security interests no later than in 15 working days after receipt of the request.</p> <p>It should be noted that, with the agreement of the President of the Commission, this period may be extended by five days. If no conclusion is reached, the investor is deemed compliant with the interests of national security.</p> <p>The Commission is required to reach a conclusion within 20 working days (the time limit can be extended up to 3 working days) of the start of the review.</p> <p>If the Commission does not adopt a conclusion within the time limits, or if it adopts a conclusion stating that the investor is in the interest of or poses a risk to national security, such conclusion shall be deemed to be a final decision.</p> <p>In case the Commission adopts the decision that the investor does not conform to the national security interests, the final decision is then adopted by the Government within 15 working days (Article 12 of the Law on National Security).</p>	

<b>14.</b>	<b>Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)</b>
<p>The Commission's decision can establish that the investor (Article 12 of the Law on National Security):</p> <ul style="list-style-type: none"> <li>• meets the national security interests;</li> <li>• poses a risk to national security interests, in which case the conclusion shall set out appropriate recommendations which must be followed in order for the transaction to proceed;</li> <li>• fails to meet the national security interests. In such case, if further approved by the Government, the transaction is blocked.</li> </ul>	
<b>15.</b>	<b>Publicity of the decision and confidentiality of the information provided</b>
<p>Decisions containing commercially secret information shall not be published in the Register of Legal Acts.</p> <p>Additionally, when submitting the information and documents specified in the Commission's Rules of Procedure, the investor may specify in writing that this information constitutes a commercial/industrial secret or is confidential and that the Government and/or the Commission must ensure the confidentiality of this information.</p>	
<b>16.</b>	<b>Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)</b>
<p>Decisions taken by the Commission may be appealed to the Vilnius Regional Administrative Court within 30 days from the adoption of the decision following the procedure established by the Law on Administrative Proceedings of the Republic of Lithuania. Such an appeal shall be heard not later than 45 days from the date of receipt of the appeal.</p>	
<b>17.</b>	<b>Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)</b>
<p>If the parties choose to enter into the transaction without applying for the Commission's assessment, or if the transaction was entered into while the assessment was ongoing, the transaction is deemed null and void from the moment of entry into the transaction. The same applies if the parties proceed with the transaction that the Government assessed to be not in compliance with the interests of national security.</p> <p>If the investor has acquired shares of an enterprise of importance to ensuring national security in violation of the requirements of this Law or the Government's decision has been adopted concerning the investor, such an investor shall not have the right to attend and vote at the general meeting of shareholders of the enterprise of importance to ensuring national security whose shares he has acquired and shall not be entitled to exercise other non-property rights (Article 14(1) of the Law on National Security).</p> <p>Additionally, if the Commission notifies the investor of the review and it fails to provide the Commission with the documents and information referred to in the Commission's Rules of Procedure within 10 working days and the Commission's conclusion or the Government's decision that the investor is in compliance with the national security interests has not been adopted, it shall be deemed to be a risk or in non-compliance with national security interests (Article 11(7) of the Law on National Security).</p>	

<b>18.</b>	<b>Other national security review distinct from FDI rules</b>
Not applicable.	
<b>19.</b>	<b>Significant legislative/regulatory developments in the past year and possible proposals for reform</b>
<p>Since Russia's war in Ukraine began in 2022, the Commission started to take a more conservative approach when deciding if FDI needs to undergo screening and the transactions involving Russia, Belarus or China will most likely be blocked.</p>	
<b>20.</b>	<b>Helpful links</b>
<ul style="list-style-type: none"> <li>• <a href="#">Official statistics portal e-publication about FDI (edition 2022)</a></li> </ul>	