

Foreign Investment Screening Regime in Ireland

January 2025

Following the enactment of the [Screening of Third Country Transactions Act 2023](#) (the **Act**) on 31 October 2023, which commenced operation on 6 January 2025, the Minister of the Department of Enterprise, Trade and Employment (the **Minister**) (the **Department**) will be responsible for screening foreign direct investment in Ireland, which may present risks to Ireland's state security and/or public order.

Investments Captured Under the New Regime

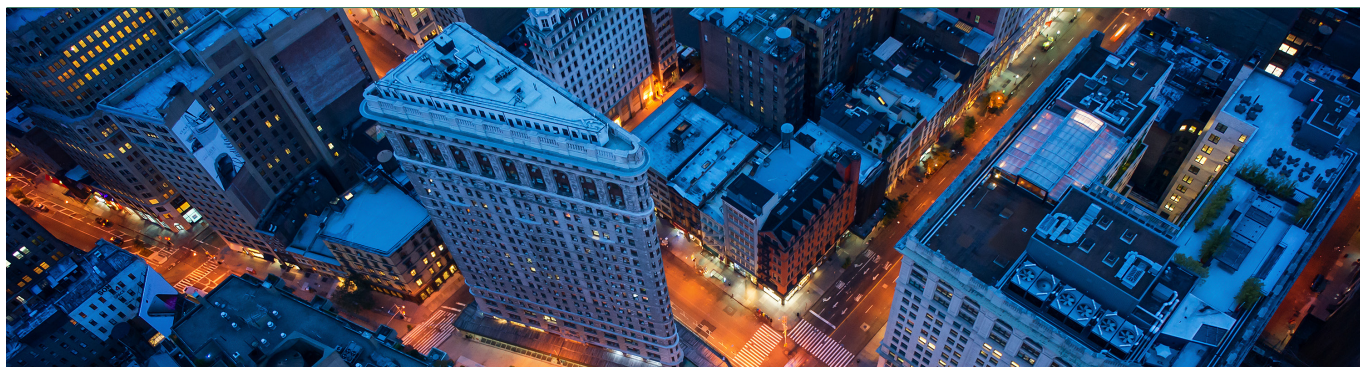
The Act is focused on mergers and acquisitions in Ireland that involve Foreign Investors (which are those based outside the European Economic Area and Switzerland, seeking to invest in Ireland) and connected persons, as defined in section 220 of the Companies Act 2014 (**Foreign Investors**).

The Minister must be notified via the [Inward Investment](#)

[Screening Notification Form](#) if the investment **satisfies each of the following criteria**, which are listed at section 9 of the Act:

1. The target is an entity or asset in Ireland (the **Target**) and one of the following is occurring:
 - a. Control of the Target is being acquired. Section 2 of the Act defines control of a Target as having "decisive influence", which is having the power to determine the strategic commercial behaviour of the Target, in particular in relation to matters such as the Target's budget, business plan, major investments or the appointment of senior management; or
 - b. The Foreign Investor's shareholding in the Target is increasing from:





- i. 25% (or less) to more than 25% of the shares or voting rights; or
- ii. 50% (or less) to more than 50% of the shares or voting rights.

The consideration for the acquisition or merger (the **Transaction**) is more than €2 million. This is an aggregate figure which includes the current Transaction and any other transactions which have occurred within the previous 12 months between the Foreign Investor and the Target.

The Foreign Investor and the Target are separate undertakings, i.e. the Transaction is not intra-group.

The Transaction relates to or impacts on any of the following critical areas:

1. **critical infrastructure** which includes any asset, facility, equipment, network or a system, or simply a part of any of the preceding, which is necessary for the provision of an essential service. Transactions in the following industries are likely to be considered to involve critical infrastructure: energy, transport, water, health, financial infrastructure, sensitive facilities and land and real estate crucial for the use of such infrastructure (Refer to Directive (EU) 2022/2557 for further detail).
2. **critical technologies and dual use items** which includes technology related to artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, nanotechnologies and biotechnologies, as well as technology which is a dual-use item with both civil and military purposes (refer to Annex I of Council Regulation (EC) 2021/82 for the definitive list of dual-use items).
3. **critical inputs** which include energy, raw materials and food security. Further information can be found in the Critical Raw Materials Act 2024 with a list of strategic raw

materials in its Appendix 2.

4. **access to sensitive information** which is data that must be protected from unauthorised access to safeguard the privacy and security of Irish citizens and organisations and includes data on the following: personal data, trade union membership, genetic data, biometric data, health and sexual orientation related data; or
5. **the freedom or pluralism of the media**, transactions which involve media businesses (as defined in the Competition and Consumer Protection Act 2014) and may affect the diversity of media content or the diversity of media ownership within Ireland are likely to require mandatory notification.

Exceptions

Purely portfolio investments being the acquisition of shares on the capital market solely with the intention of making a financial investment without any intention to influence the management and control of the Target do not require mandatory notification. Since this type of investment is not made with the intention of acquiring control of the issuing company, mandatory notification is only required where 25% or more of shares are being acquired.

As the primary focus of the Act is on merger and acquisition activity, greenfield investment such as the purchase of land only comes within scope in limited circumstances, notably where land is purchased in relation to critical infrastructure such as energy, water or communications.

Internal restructuring with a corporate group or re-domiciling where the Foreign Investor and Irish Target are owned and controlled by the same foreign parent group does not require mandatory notification. Where the ultimate control of the Target remains unchanged, no mandatory notification is required.

Transactions which involve Targets which are the subject or receivership, examinership or liquidation do not require mandatory notification in respect of the performance of the statutory functions taken by such appointees, to the extent that these functions fall short of the actual disposition of the legal or beneficial ownership of the secured assets in question.

Where a lender obtains shares as a result of an unpaid debt, no notification is required unless control of the Target is attached to the shares which are obtained, and such control is exercised (i.e. the lender decides to dispose of the Target) and the criteria in section 9 of the Act are fulfilled.

Mortgagees in possession only require notification when enforcing their security:

1. at the point of actual disposition of the legal and beneficial ownership of the Target to a third party (which includes where the mortgagee in possession becomes the full legal and beneficial owner itself via one of its affiliates); or
2. at the point at which the mortgagee in possession acquires the legal and beneficial ownership of the Target.

However, it should be noted that all transactions whether notifiable under the Act or not are subject to the Minister's call-in power if the Minister has reasonable grounds for believing that such transactions pose a threat to security or public order. This is discussed below.

Joint Ventures

To the extent that a Foreign Investor is participating in a joint venture and will acquire control over the Target then mandatory notification is required if the criteria in section 9 of the Act are fulfilled, or if the joint venture to which the Foreign Investor is a party to, takes control of an Irish-state asset.

Minister's Discretion

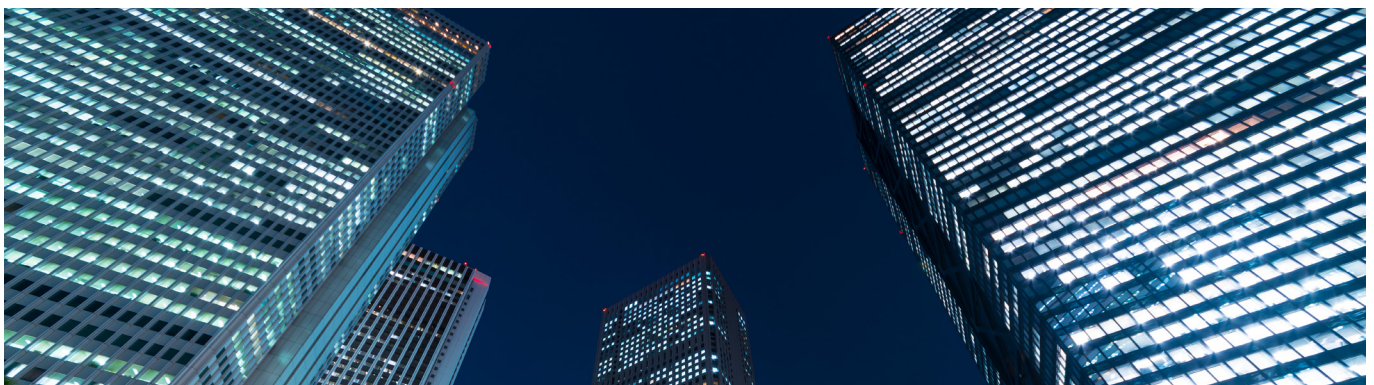
The Minister may review transactions which do not meet the mandatory notification requirements but where the Minister has reasonable grounds to believe that the transaction poses a risk to security or public order under section 12 of the Act. This will be particularly relevant for new and emerging technologies or sectors not currently captured under section 9 of the Act.

The Minister cannot call in a non-notifiable transaction for review more than 15 months after the transaction has been completed. However, section 12(2) of the Act gives the Minister retroactive powers to review notifiable transactions that should have been, but were not notified. The Minister can review these transactions for a period of up to 5 years after the completion of a relevant transaction, provided the Minister commences the review within 6 months of becoming aware of any such transaction. In practice, this will mean that transactions completed before the regime's official commencement could still be subject to the Minister's review if they meet the criteria in section 9 of the Act.

Notification Process

The Department is currently developing an online case management system through which notifications will be made, with the [Inward Investment Screening Notification Form](#) outlining the types of information sought by the Minister. Currently there are no fees involved in relation to the notification and screening process.

Pursuant to section 10 of the Act, either party to a Transaction must notify the Minister at least 10 days prior to the completion of the Transaction. Both parties will need to work with the Department to provide all required information under the notification process.



Once the Minister is notified of the Transaction, The Minister will provide a screening notice. Any transaction which is subject to a screening notice cannot proceed to completion until a screening decision has been communicated by the Minister. The Minister will provide the screening notice as soon as practicable after commencing a review of the Transaction (section 14 of the Act).

Once the screening notice has been issued, the Minister has 90 days (or in complex circumstances and where the Minister notifies applicants, up to 135 days) to provide a screening decision (section 16 of the Act). However, should the Minister require further information, the Minister will issue a request for information which must be complied with within 30 days (section 19 of the Act). During any request for information, the statutory clock stops i.e. if the notification is on day 35 of 90 it pauses there until such a time the request for information is fulfilled to the Minister's satisfaction, at which point the statutory clock will recommence (from day 35), within 10 days of the Minister receiving the requested information.

For best practice, as transactions are unable to be completed

parties and reviewed the factors set out in section 13 of the Act, the Minister shall make a decision. The Minister may either approve the transaction, prohibit the transaction or if the transaction poses a threat to security or public order, the Minister may allow the transaction to proceed subject to certain conditions being met (section 18 of the Act).

There is an appeals process which begins with an independent adjudicator reviewing the Minister's decision. Following this, leave from the High Court can be requested for a judicial review of the decision (sections 27 and 34 of the Act).

Penalties

There are a number of offences, including those found in sections 10(4), 17(1), 18(4), 19(4), 28(5), 30(6) and 32(2) of the Act. Penalties for offences such as failing to notify the Minister of a notifiable transaction, providing false information or failing to comply with a direction of the Minister can result in severe penalties outlined in section 6 of the Act. These penalties include both fines of up to €4 million as well as imprisonment terms of up to 5 years.



until such a time that the Minister provides a decision on the transaction and as the notification process can take extended periods of time, we strongly advise that professional advice is sought on the notification process from the beginning of the Transaction to cut down on potential costs and/or losses in the case that the Transaction is prohibited by the Minister or has restrictions placed upon it.

Minister's Decision

Once the Minister has completed the review which requires the Department to consult on a strictly confidential basis with other governmental departments or with other relevant

How can we help?

If you have planned M&A activity in Ireland in 2025 or within the period that is 15 months prior to the commencement of the new foreign investment screening regime that may require notification and require assistance or further information, please reach out to you usual Dillon Eustace LLP contacts or any of the key contacts listed below.

For Further Information, please refer to the [guidance](#) on the Act published by the Department.

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