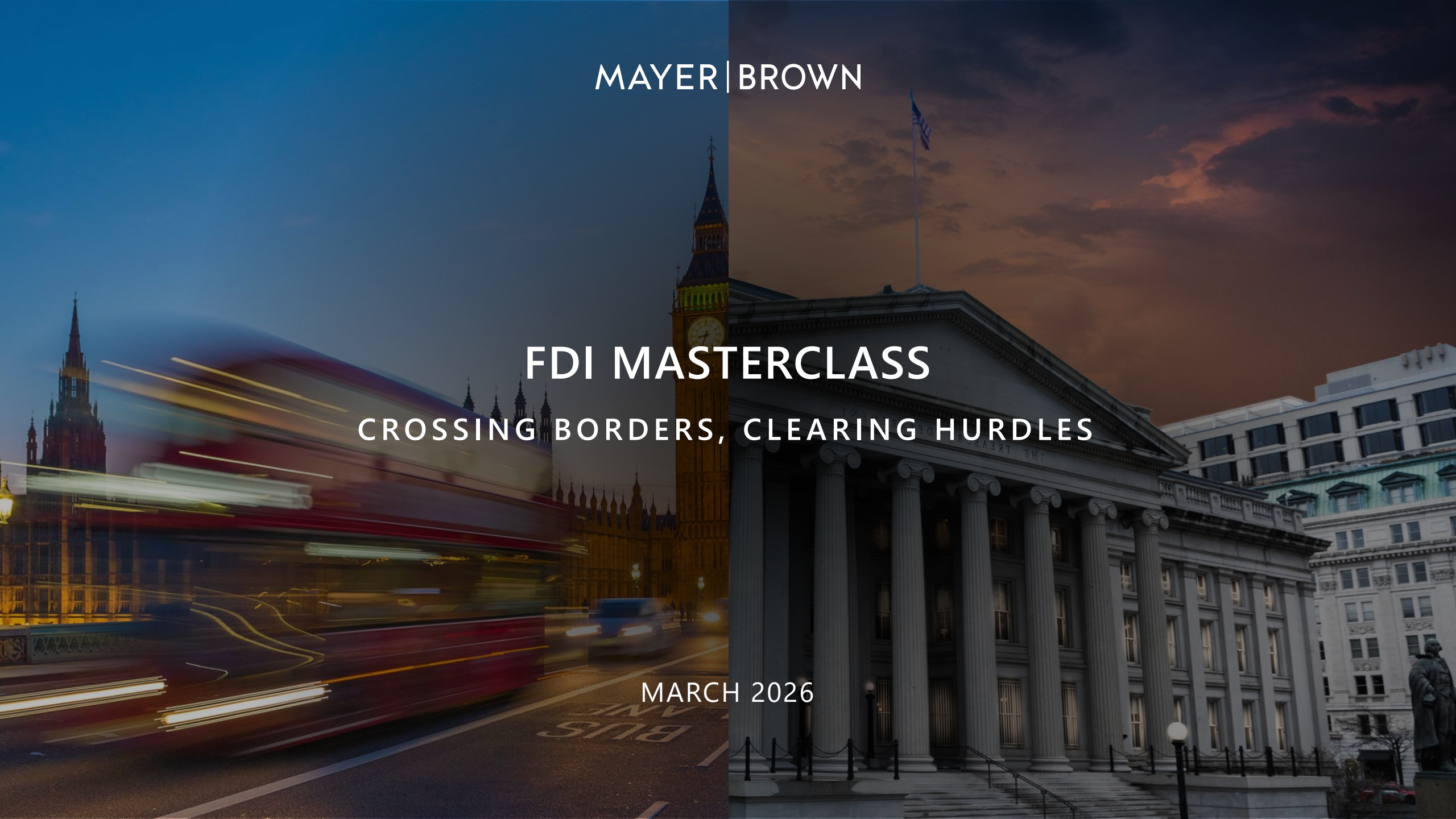


MAYER | BROWN

FDI MASTERCLASS
CROSSING BORDERS, CLEARING HURDLES

MARCH 2026



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AGENDA

1. CFIUS
2. UK Reform Imminent: Regime at the Crossroads
3. EU FDI Screening: What will change for Companies investing in the EU
4. Key Takeaways
5. Q&A

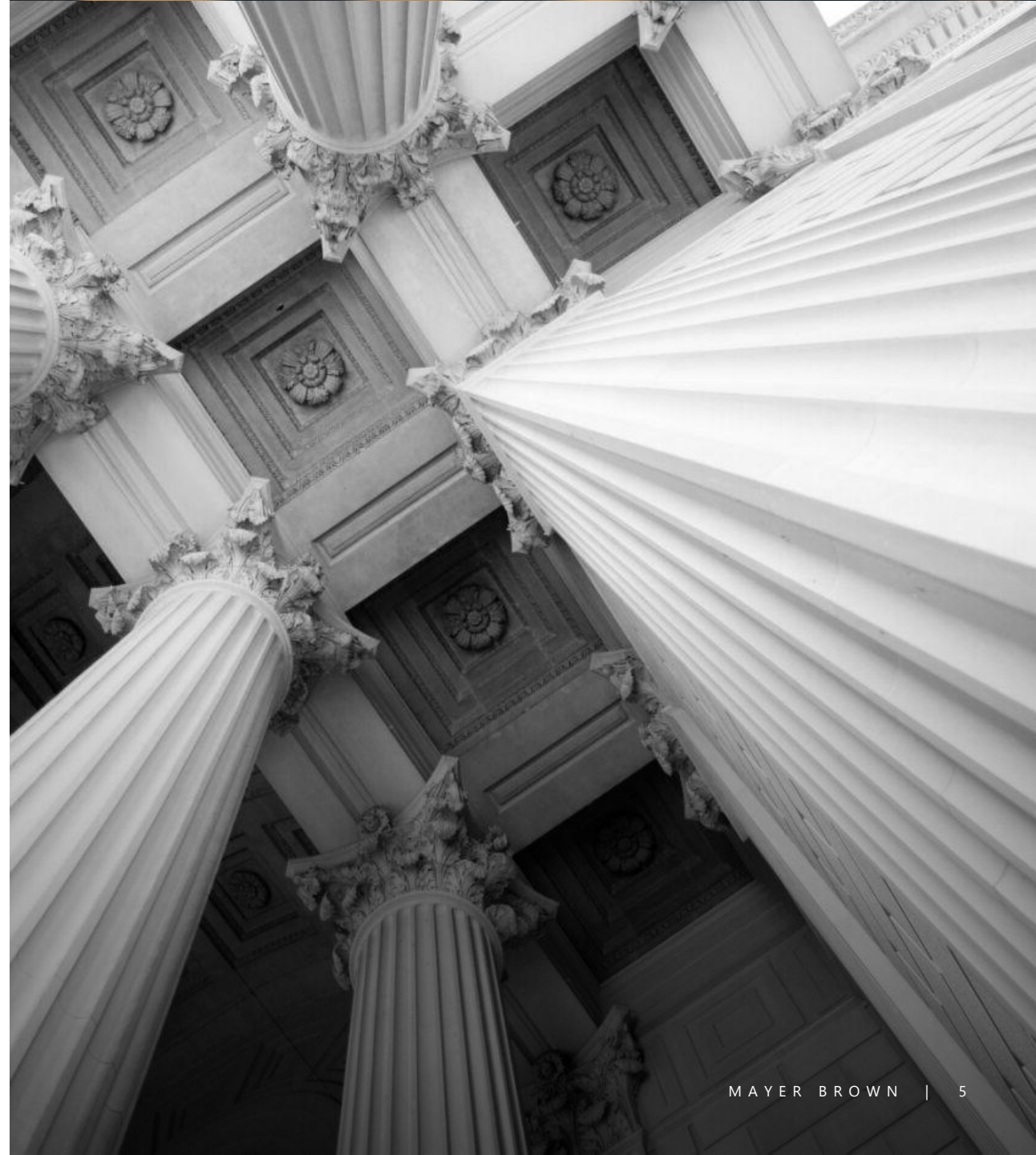
The image shows the Treasury Department building in Washington, D.C., during the "blue hour" of dusk. The sky is a deep, dark blue with some light clouds. The building's facade is illuminated from within, showing the classical architecture with its prominent columns and pediment. The text "THE TREASURY DEPARTMENT" is visible on the pediment. A large, white number "01" is superimposed over the center of the image. A thin white vertical line runs down the center of the page, passing through the number "01".

01

THE COMMITTEE ON FOREIGN INVESTMENT
IN THE UNITED STATES (CFIUS)

CFIUS - INTRODUCTION

- CFIUS is an interagency committee chaired by the Secretary of the Treasury that is authorized to review certain transactions involving foreign investment in the United States to determine the effect of such transactions on the national security of the United States.
- CFIUS can recommend that the President block or unwind a transaction for national security concerns.
- CFIUS can also impose requirements on a transaction to mitigate any national security risks (e.g., a US-citizen board, a CFIUS-approved US-citizen security officer, or the sale of sensitive assets).
- CFIUS is a confidential process, though annual reports with aggregate data are released.



CFIUS - INTRODUCTION

CFIUS has jurisdiction over three types of investments:

- **Covered Control Transactions** - transactions “by or with any foreign person which could result in foreign control of any U.S. business” (i.e., the traditional scope of CFIUS jurisdiction);
 - 31 C.F.R. § 800.210.
- **Covered Investments** - small, non-controlling investments by foreign persons:
 - in sensitive “TID U.S. businesses,” (which deal in Critical Technology, Covered Investment Critical Infrastructure or Sensitive Personal Data), and
 - in which a foreign person gains a board or observer seat, access to material nonpublic technical information (non-financial), or involvement in substantive decision-making other than voting its shares with respect to the U.S. business at issue; and
 - 31 C.F.R. § 800.211.
- **Covered Real Estate Transactions** - in which the real estate at issue is located in proximity to specified ports and specified sensitive government and military installations.
 - 31 C.F.R. § 802.212.



CFIUS - KEY DEFINITIONS

Critical Technologies includes:

- Items controlled for export under:
 - (i) the International Traffic in Arms Regulations (ITAR),
 - (ii) the Export Administration Regulations (EAR), pursuant to multilateral regimes, regional stability, surreptitious listening, and
 - (iii) Nuclear parts and technology, (iv) select agents and toxins, and (v) emerging and foundational technologies.
 - 31 C.F.R. § 800.215.

Covered Investment Critical Infrastructure is set out in a prescribed list by CFIUS covering important infrastructure. List includes power generation, rail, port terminal, water, Department of Defense suppliers, and other assets that are similarly important to national security.

- 31 C.F.R. § 800.212 /31 C.F.R. Part 800, Appendix A.

Sensitive Personal Data: Identifiable data maintained or collected by a U.S. business that (A) targets U.S. national security-related staff or contractors, (B) has data in sensitive categories (e.g., health, financial, geolocation) on more than one million individuals or has a designated business objective to have such data, or (C) genetic information.

- 31 C.F.R. § 800.241.

CFIUS - KEY DEFINITIONS

Control is broadly defined as the power to determine, direct, or decide important matters affecting an entity through any means, including:

- ownership of a majority of the total outstanding voting interests, proxy voting, contractual arrangements, or arrangements to act in concert; and
- minority interests that confer a significant ability to affect important matters related to the US business (could be as low as 15% by voting share plus a board seat).
 - 31 C.F.R. § 800.208.



CFIUS - MANDATORY FILINGS

1. Excepted investors from Five Eyes countries.
2. Other filings are mandatory in two circumstances:
 - The acquisition of a **Substantial Interest** (a voting interest, direct or indirect, of 25 percent) in a TID U.S. business by a foreign person in which a foreign government has a “substantial interest” (a voting interest, direct or indirect of 49 percent); for determining indirect interests, parents (50% or more) are deemed to have 100%.
 - 31 C.F.R. § 800.401(b).
 - **Covered Investments and Covered Control Transactions** involving TID U.S. businesses that:
 - (1) produce, design, test, manufacture, fabricate, or develop “critical technologies”, and
 - (2) a “US regulatory authorization” would be required to export, re-export, transfer (in-country) or retransfer the technologies to certain foreign persons involved in the transaction.
 - 31 C.F.R. § 800.401(c).



CFIUS - VOLUNTARY FILINGS

- CFIUS is a **voluntary** process - either or both parties to a prospective transaction may notify CFIUS and initiate a review.
- However, the only way to receive a legal guarantee that CFIUS will not force a divestment or mitigation terms on a transaction is to file.
- Parties receive two types of a legal “safe harbor:”
 - If CFIUS clears the transaction and effectively approves it (which could include the negotiation of a mitigation agreement); or
 - If CFIUS determines that the transaction is not subject to its jurisdiction.
- For all transactions, either a short-form “Declaration” or a long-form “Notice” may be used.
- 31 C.F.R. Subpart D, Declarations / 31 C.F.R. Subpart E, Notices.
- When reviewing both Declarations and Notices, CFIUS may ask questions of the parties – which must respond quickly (2 business days for Declarations, 3 for Notices).
- 31 C.F.R. § 800.406 / 31 C.F.R. § 800.504.

CFIUS - TIMELINE FOR REVIEWS

Declarations: Once accepted by CFIUS, CFIUS must respond within 30 days. 31 C.F.R. § 800.405. Possible responses:

- Request a Notice from the parties (the acceptance of which would begin a 45-day review process) or unilaterally take action to review the transaction;
- Conclude action with respect to the transaction by indicating to the parties that there are no unresolved national security concerns; or
- Take no action with respect to the transaction, meaning that CFIUS is not able to complete action on the basis of the Declaration and that the parties may file a Notice if they wish to receive affirmative approval from CFIUS.
 - Note: this does not provide a legal safe harbor but indicates as a practical matter that CFIUS does not have concerns.
- 31 C.F.R. § 800.407.

Notice: Once accepted by CFIUS, 45-day review process begins. 31 C.F.R. § 800.503

- At end of review period, CFIUS may approve the transaction or begin a 45-day investigation period. 31 C.F.R. § 800.505-506.



RECENT DEVELOPMENTS

- Executive Order 14083: Codifies recent expansions of CFIUS focus, including critical supply chains, AI, biotech, aggregate investment trends, cybersecurity risks, and sensitive personal data
- Federal and State Proposals to Scrutinize Real Estate Acquisitions:
 - Addition of 8 additional US military facilities; follows scuttled property acquisition near Grand Forks Air Force Base.
 - 85 FR 3166, Jan. 17, 2020, as amended at 88 FR 57350, Aug. 23, 2023.
- Enforcement/Penalty Guidelines
- Penalty enhancements
- Mitigation negotiation response times
- America First Investment Policy
 - Trump II Administration trends
- Outbound Investment Regulation/COINS Act



02

UK REFORM IMMINENT:
REGIME AT THE CROSSROADS

NATIONAL SECURITY AND INVESTMENT ACT: A KEY CONCERN FOR INTERNATIONAL M&A

- **Introduced in 2022, the UK national security screening system is now among the world's most active investment screening regimes.**
- Number of notifications is a function of the breadth of the regime.
 - **No value threshold.** Decisive criterion is nature of target's activities, not size of deal, turnover or asset values.
 - **Applies to UK-based investors.** Unlike most FDI regimes, NSIA does not distinguish between foreign and domestic investors.
 - **Applies to minority investments.** Acquisition of 25% interest may trigger mandatory notification obligation.
 - **No requirement for UK presence.** Target business or assets do not need to be located in the UK; nexus can be established based on supplies into the UK.
 - **Internal re-organizations count.** Internal restructuring, even where control is maintained by the same ultimate parent, may require notification.



MANDATORY NOTIFICATIONS: DESIGNATED SENSITIVE ECONOMIC SECTORS

Notification is mandatory where a target business is active in one of seventeen economic sectors.

In 24/25, the top economic sectors for mandatory notification were:



DEFENCE

Direct suppliers to the Ministry of Defence are covered, as are sub-contractors.



CRITICAL SUPPLIERS TO GOVERNMENT

Target has access to very sensitive government data, assets or estates (e.g., processes or stores SECRET or TOP SECRET material).



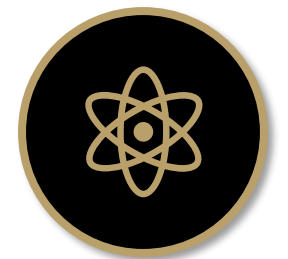
MILITARY / DUAL USE

Target provides goods or services subject to export control legislation (i.e., Strategic Export Control Lists).



A.I.

Target uses AI for identification or tracking, advanced robotics or cyber security.



ADVANCED MATERIALS

Activities in respect of specified materials (e.g., semiconductors, advanced alloys)

Most notifications (56%) received in 24/25 were associated with Defence.

The remaining twelve sectors are:

1. Advanced Robotics
2. Civil Nuclear
3. Communications
4. Computing Hardware
5. Cryptographic Authentication
6. Data Infrastructure
7. Energy
8. Quantum Technologies
9. Satellite and Space Technology
10. Suppliers to Emergency Services
11. Synthetic Biology
12. Transport

“COUNTRY AGNOSTIC” REGIME: RELEVANT TO ALL DEAL-PLANNING

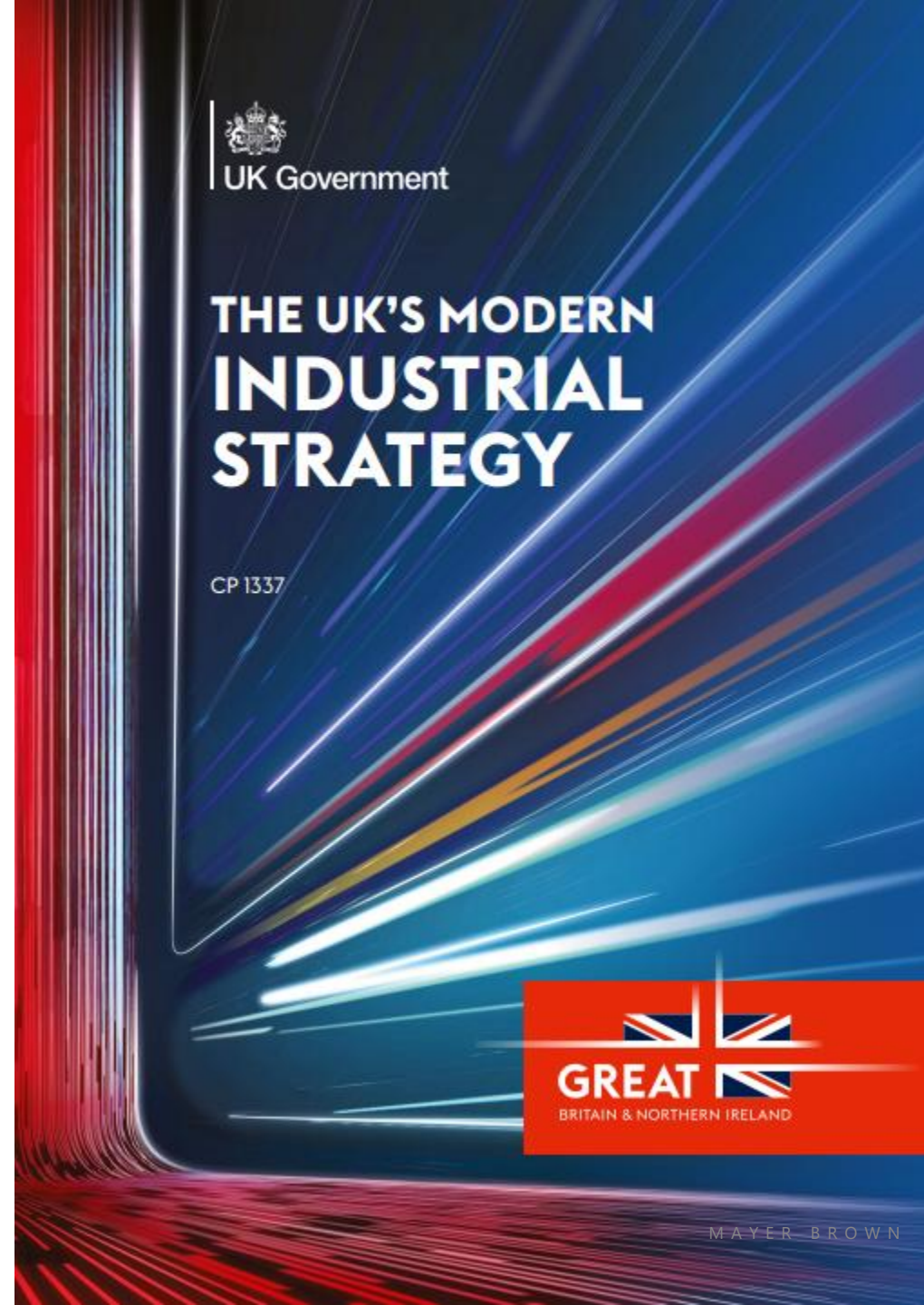
- Most notifications involve acquirers associated with the UK.
- When it comes to in-depth reviews and intervention, there is a focus on investment from China – but not to the exclusion of other countries.
 - Only deal prohibited in 24/25 related to a Chinese acquirer
 - Adverse findings were also reached against acquiring companies affiliated to strategic allies (e.g., US, France, Germany, Australia)

- Origin of investment and risks presented by an acquirer are important factors but not determinative – sensitivity of target activities is key.

ORIGIN OF INVESTMENT		
ACCEPTED NOTIFICATIONS	CALL-IN NOTICES	FINAL ORDERS
1. UK	UK	UK
2. United States	China	China
3. France	United States	United States
4. Luxembourg	United Arab Emirates	British Virgin Islands
5. Sweden	Singapore	Luxembourg

FOCUS ON ECONOMIC GROWTH DRIVES REFORM AGENDA

- Economic growth is the “*number one mission*” of the present UK Government.
- Maximizing inward investment to the UK is a central pillar of “Invest 2035”, the UK Government’s 10-year Modern Industrial Strategy.
- At the same time, the Modern Industrial Strategy emphasizes “*new threats to our security*” and acknowledges a “*new era of geopolitical competition*”.
- 12-week consultation in 2025 to update the definitions of the sensitive areas of the economy subject to mandatory notification.
- Separate plans to exclude certain forms of internal reorganisation from mandatory filing regime.



ANNOUNCEMENT OF REFORM PROGRAM: WELCOME CHANGES OR MISSED OPPORTUNITY?

- Mostly minor, incremental changes to applicable sector definitions.
- Significant revisions to AI sector definition, excluding uses of AI tools in routine business contexts to focus instead on development activities.
- Critical Minerals and Semiconductors to be carved-out of Advanced Materials.
- Inclusion of Water as a notifiable sector.
- Government acted on consultation feedback and reforms to Communications will not lead to low-risk SMEs being within scope.
- Promise to provide updated, more detailed guidance.
- **Secondary legislation will be introduced later in the year – status quo prevails until legislation is effective.**





FURTHER REFORM ON THE HORIZON?

- Reforms now announced by Government are projected to increase, not decrease, overall number of NSIA filings.
- Official UK Government statistics indicate inward investment in the UK in 24/25 was at the lowest level since records began.
- During 2025 consultation, many stakeholders advocated wider-ranging reform of the NSIA regime
 - e.g., local presence to establish requisite UK nexus
 - e.g., *de minimis* threshold
- House of Commons Business and Trade Committee has recommended a fast-track system for accredited investors from allied nations.
- Update outstanding on internal reorganizations.

The background of the slide features a dark, monochromatic photograph of classical architecture. In the upper portion, several large, fluted columns are visible, resting on a series of wide, stone steps that lead up towards them. The lighting is dramatic, highlighting the textures of the stone and the fluting of the columns. A thin, vertical white line runs down the center of the image, passing through the text.

03

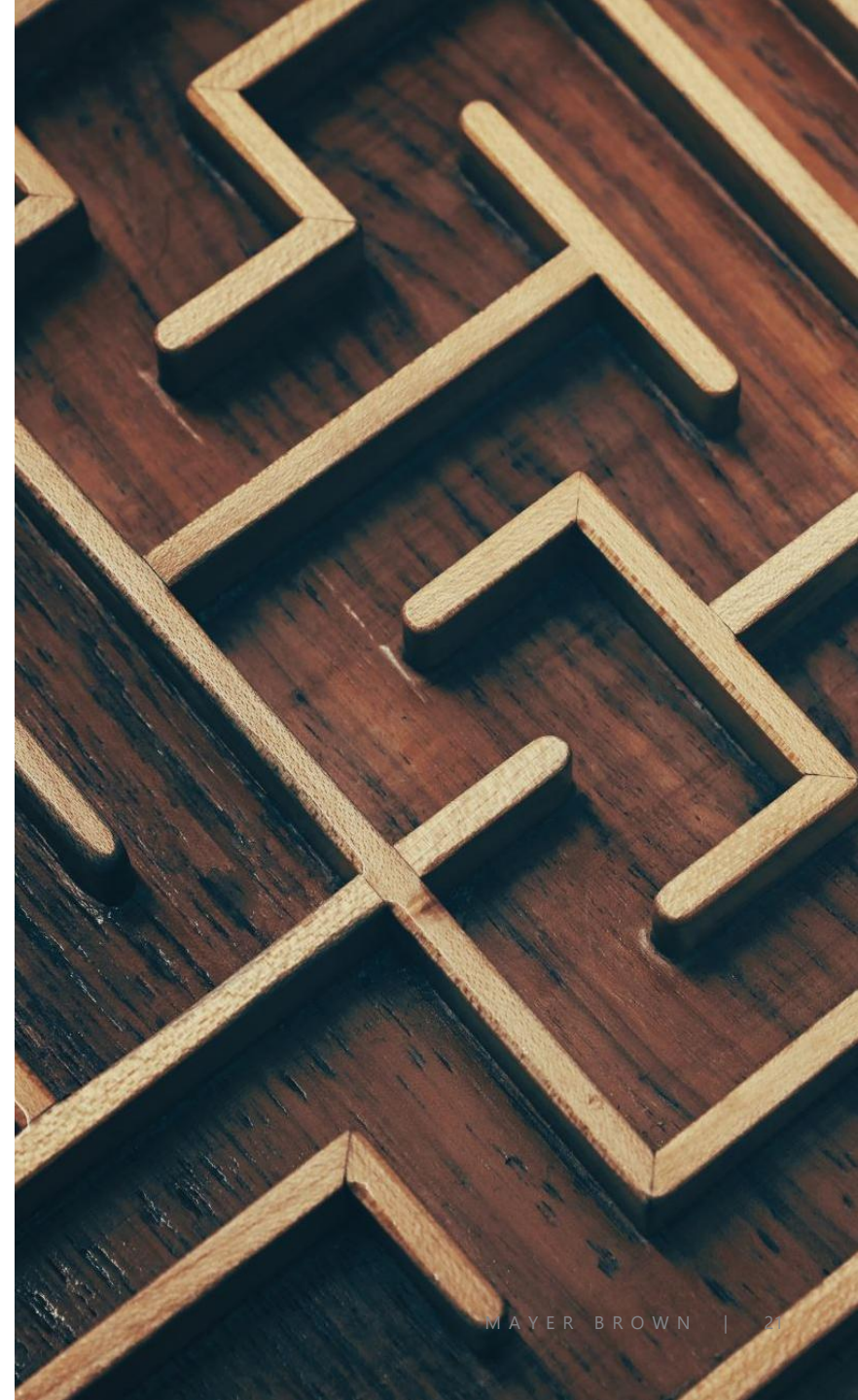
EU FDI SCREENING: WHAT WILL CHANGE FOR
COMPANIES INVESTING IN THE EU

THE DIVERSITY OF FDI SCREENING ACROSS THE EU

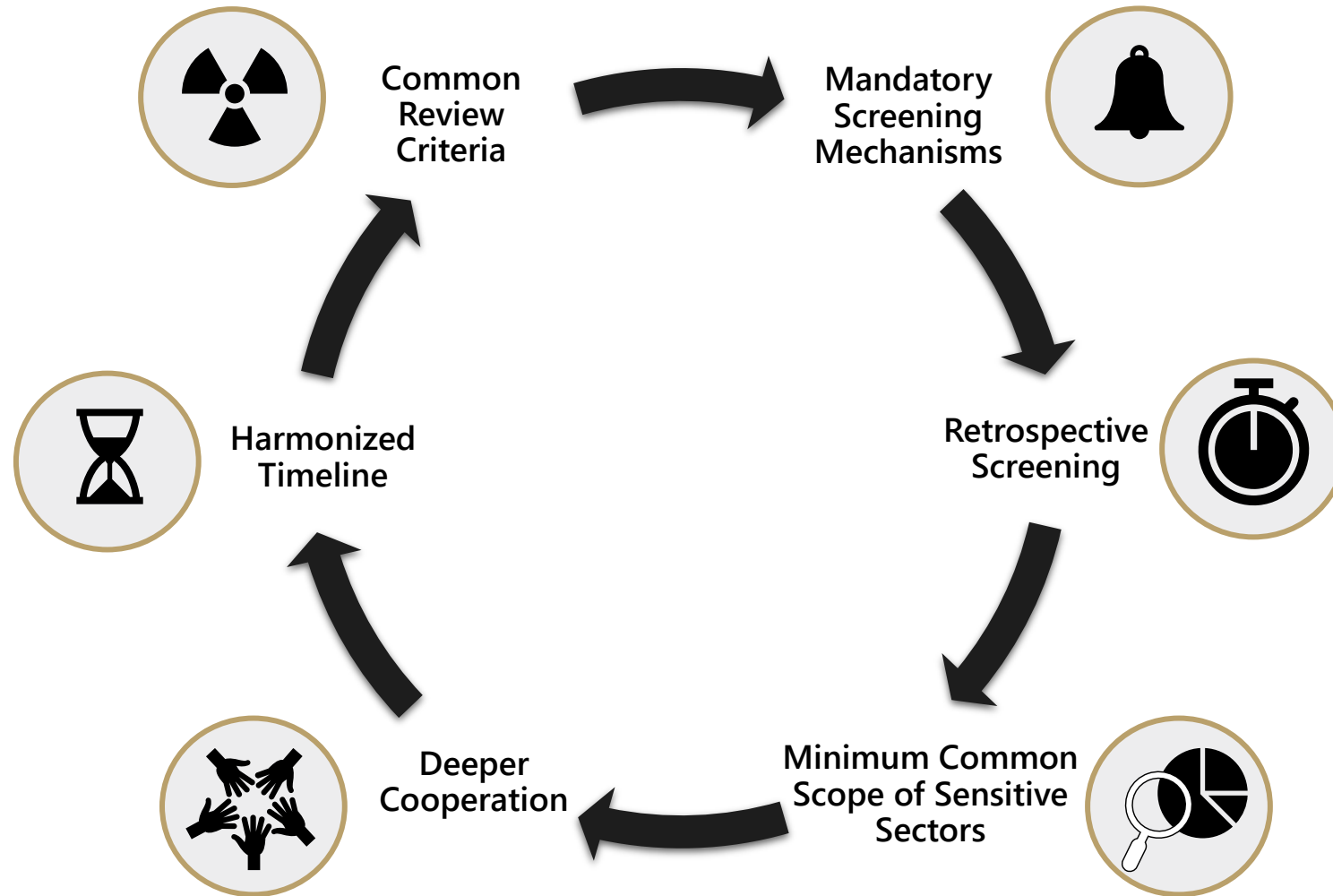
- Assessing the effects of foreign investments is by nature first and foremost a **national prerogative**, which results in the **coexistence of very different regimes** across the EU
 - non-controlling investments?
 - internal restructurings?
 - greenfield businesses?
 - EU-based (or even domestic) investors?
 - Locally-registered entity requirement?
 - Large variety of sectors covered and protected interests
 - Different theories of harm, timelines, procedures and screening powers
- An EU investment screening Framework was adopted in 2019 to help identify investments made in one Member State that **could pose risks to security or public order** in others
 - **encouraged (but did not require)** Member States to adopt screening mechanisms
 - **set key requirements** for Member States willing to adopt such national mechanisms, including transparency, non-discrimination, confidentiality, and due process
 - **established a cooperation mechanism** for exchanging information and raising concerns on given investments



In December 2025, a political agreement was reached on a new FDI Regulation aimed at strengthening the economic security of the EU by introducing a common minimum level of harmonization across the EU



A MINIMUM LEVEL OF HARMONIZATION





MANDATORY SCREENING

- Requirement to introduce a **pre-closing** national FDI screening regime
- Also **covering some intra-EU investments**, where the direct investor is (directly or indirectly) **controlled by non-EU nationals or entities**
- **Only a minimum: member States to keep discretion to also review**
 - Acquisitions by **EU-controlled or domestic investors**
 - **Greenfield investments:** *"establishment of new facilities or of an undertaking for the performance of an economic activity in the Union"*
 - **Internal reorganizations** (no change of beneficial owner), with an **important exception:** EU Regulation to also apply to reorganizations that result in the introduction in the ownership chain of a EU-based sensitive target of a company registered in a non-EU country that was not yet represented in that chain
- National FDI authorities to be **required to provide the parties with an opportunity to "make their views known effectively"**



Many discrepancies will remain across the EU in the type of investors and investments caught

RETROSPECTIVE SCREENING

Requirement to create an ability for each national screening authority to **initiate *ex officio* screening retroactively**

- For foreign investments **not subject to a prior authorization requirement**, but that might **affect security or public order**
 - Within a period of **at least 15 months** and up to a maximum of **5 years** following completion
- For investments subject to prior authorization and that were **closed without prior clearance**
 - For at least **24 months** following completion



Major change leading to less legal certainty
More precautionary filings?
More Member States to allow for voluntary filings?

MINIMUM COMMON SCOPE OF SENSITIVE SECTORS

Member States must provide for a prior clearance requirement for foreign investments in EU-based targets active in the following sectors



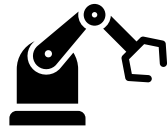
DUAL-USE ITEMS

Items on the EU Common list of dual-use items subject to export controls (Annex I to Regulation (EU) 2021/821)



DEFENSE-RELATED PRODUCTS

Items on the EU Common Military List (Annex to Directive 2009/43/EC)



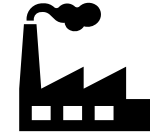
ADVANCED TECHNOLOGIES

Semiconductors, quantum technologies, and AI (even only research)



FINANCIAL ENTITIES

Central counterparties, central securities depositories, operators of regulated markets, operators of payment systems (excl. central banks), other systemically important institutions, global providers of specialized financial messaging services



CRITICAL RAW MATERIALS

Exploration, extraction, processing, recycling, recovery or stockpiling as defined in the Critical Raw Materials Act



ELECTORAL INFRA-STRUCTURE

Voter registration databases, voting systems, electoral management systems



CRITICAL INFRA-STRUCTURE

Transport, energy, or digital infrastructure considered critical pursuant to a risk-based assessment by the individual Member State

DEEPER COOPERATION

- Two cases of **mandatory activation of the EU cooperation mechanism**
 - **Covered Sectors + Investor Criteria:** the investment concerns a target active in the minimum scope of sectors (Annex II) **AND** one of the following investor criteria is met
 - Government-controlled
 - Sanctioned investor
 - Prior problematic history (prior FDI prohibition/repeat violations)
 - **Procedural triggers** (regardless of sector concerned)
 - A host MS decides to open an in-depth investigation under its national regime
 - A host MS prohibits the investment without an in-depth investigation
 - A host MS imposes mitigating measures without an in-depth investigation **AND** the target is active in a project of Union interest or has subsidiaries or is part of a group with multiple subsidiaries in other Member States
- The mechanism may also be voluntarily activated where deemed appropriate
- Creation of a **shared database**, and possibly of an **online portal for multi-filings**
- Cooperation to be facilitated by **more harmonized timelines:** two-phase review to become the norm (45 calendar days phase 1 review)



Impact on timing: harmonized timelines but potential for longer and more complex reviews

COMMON CRITERIA FOR SUBSTANTIVE REVIEW

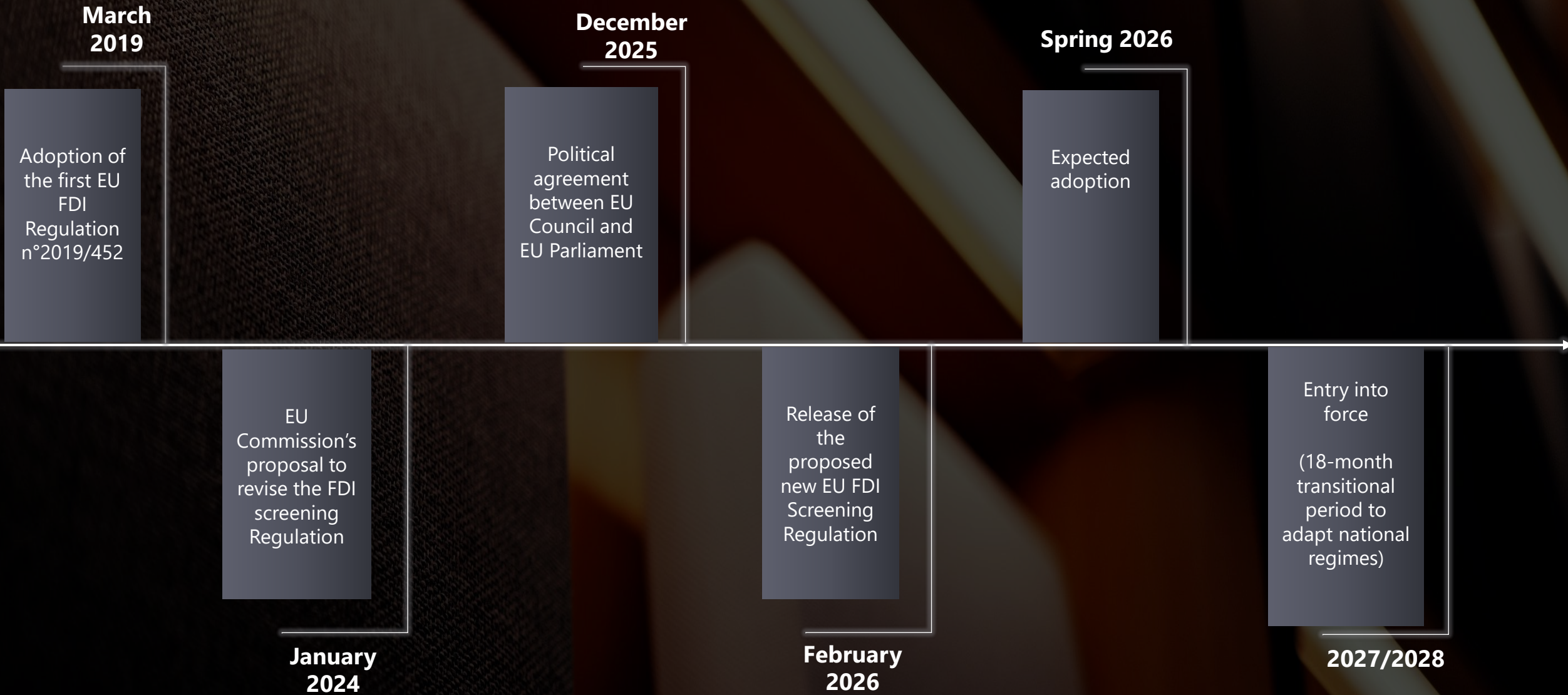
IMPACT-BASED CRITERIA

- ❑ Availability of critical technologies
- ❑ Targets active in projects and programs of Union interest
- ❑ Security of critical infrastructure
- ❑ Continuity of supply of critical inputs
- ❑ Protection of sensitive information
- ❑ Media freedom and pluralism
- ❑ Protection of electoral processes
- ❑ Protection of public health
- ❑ Protection of food security
- ❑ Security of military facilities

INVESTOR-BASED CRITERIA

- ❑ Prior adverse screening decisions
- ❑ Sanctioned investor
- ❑ Prior harmful activities
- ❑ Illegal activities
- ❑ AML/CFT deficiencies
- ❑ Intelligence obligations
- ❑ Opaque ownership structure
- ❑ Government control
- ❑ **The foreign investor is likely to pursue a third country's policy objectives**, including by using the investment to coerce Member States or the Union to prevent or obtain the cessation, modification or adoption of a particular act; or facilitate the development of a third country's military; or use the foreign investment to support internal repression

THE NEW EU FDI SCREENING REGULATION





OTHER RECENT KEY EU DEVELOPMENTS

EU Recommendation on Outbound Investment Screening

- EU Commission recommended to EU Member States in January 2025 to review **outbound investments in semiconductors, artificial intelligence and quantum technologies** and assess risks to economic security
 - Technology transfer to countries of concern through EU investments abroad
 - Strategic dependencies that may arise from outbound capital flows
 - National security risks associated with EU entities investing in sensitive sectors in non-EU countries
 - Alignment with allies (notably the US)
- **Member States to report on outbound investments by end of June 2026, to determine whether further action is needed**

The Industrial Accelerator Act (IAA) proposal

- Stricter (parallel) FDI regime for emerging strategic sectors where more than 40% of global manufacturing capacity is held by a non-EU country
 - Battery technologies and their value chain (e.g. battery energy storage systems)
 - Electric vehicles and hybrid vehicles, including components for electrification and digitalization
 - Solar photovoltaic technology
 - Extraction, processing, and recycling of critical raw materials
- **Proposed Regulation adopted by the EU Commission in March 2026 to be negotiated by the EU Parliament and Council in the coming months**



04

KEY TAKEAWAYS

KEY FDI CONSIDERATIONS IN DEAL PLANNING



Anticipating reforms and potential local concerns: **monitor latest FDI developments** (and relevant political developments) in key group jurisdictions



Managing FDI uncertainties: Define **FDI strategy and assess risk early in the process** to limit exposure and impact on the deal's timeline



Assessing requirements and **making decisions in grey areas**: have access to a network of local counsel with extensive experience and an ability to deliver practical recommendations



Crafting **adequate condition precedents and disclosures** addressing risks of call ins, unexpected delays and/or conditions where relevant



Managing **global deals**: internal project manager, single contact managing all filings (merger control, FDI, FSR) and monitoring local counsel, master documents for consistency, weekly reports, public relations expert, etc.



Leveraging FDI-related strategies to create strategic opportunities: competing bids, rival projects, hostile takeovers, etc.



Questions?



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