

# The Transformation of Foreign Investment Protectionism

5 Complexities of Sensitive  
Industries



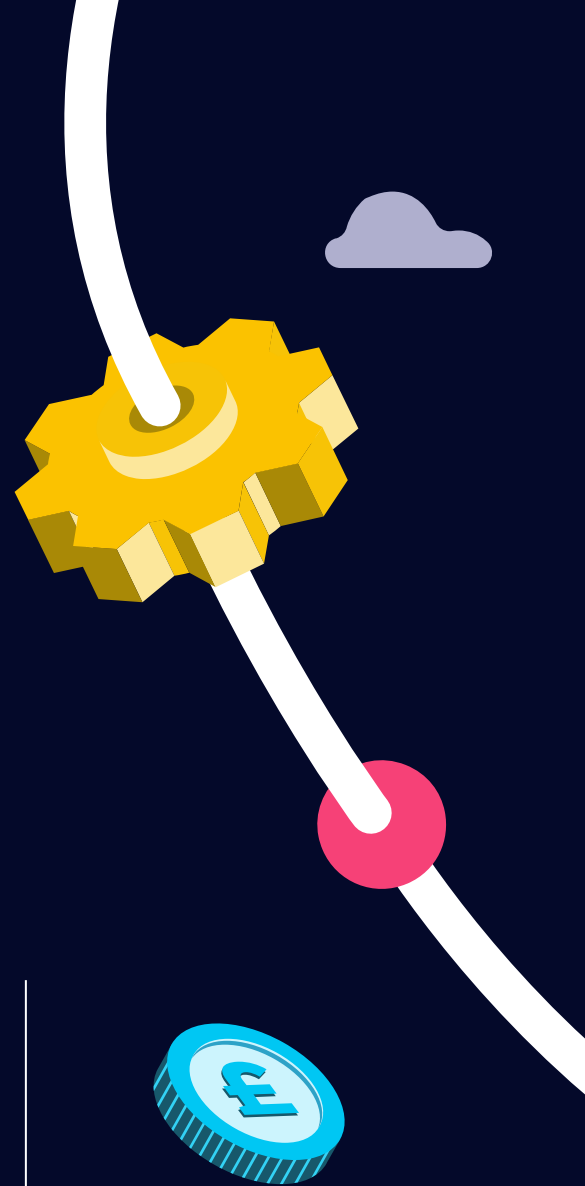
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# Overview

We're seeing a trend towards increased protectionism across many jurisdictions in regards to foreign investment. [Sensitive industries](#) describes part of the shareholding disclosure regulation that requires additional disclosure thresholds in industries which are considered to have special significance.

Unfortunately, there is no standardization across regulators in how they define these sensitive industries and subsequently it is becoming one of the biggest challenges faced by compliance teams.

This document provides an overview of the jurisdictions that are setting the new gold standard for this area of regulatory compliance and some of the key complexities you should be aware of.



# The Developing Foreign Investment Protectionist Environment

While industry-based thresholds per jurisdiction have been developing for some time, 2020 saw a significant increase in actioning industry protectionism, most notably in France and Japan.



## THE DEVELOPING FOREIGN INVESTMENT PROTECTIONIST ENVIRONMENT

### France

In April 2020, France actioned [Decree No 2019-1590](#), an order from the Minister of the Economy (MoE) on foreign investments, narrowing the scope for foreign investments in sensitive industries.

France previously had pre-approval rules for water utilities, transportation infrastructure, gas utilities, banks, diversified and financial services in addition to disclosure thresholds for media, software, and airlines.

Under the new decree, the MoE has lowered the threshold for pre-approval requirements from 33.33% down to 25%. Another decree dated 22 July, 2020 temporarily reduced the threshold for screening of investment in sensitive industries from 25% to 10%, effective 7 August to 31 December, 2020. This temporary 10% threshold has then been extended until 31 December, 2021.

Additionally, the MoE has extended the sensitive industries (SI) regime to cover issuers involved in the production, processing and distribution of agricultural products; political and generic information press services; quantum technologies; and energy storage.

Despite imposing extensive industry-specific reporting requirements and restrictions, the penalties for simply failing to obtain pre-approval on an acquisition are unforgiving and can be:

- Double the value of the investment; or
- 10% of the annual turnover excluding taxes of the target(s) operating the activities considered as sensitive; or
- €5 million for legal entities

### Japan

In June 2020, Japan unveiled its new [“Foreign Exchange and Foreign Trade Act” \(“FEFTA”\)](#) in an effort to promote Foreign Direct Investment (FDI) whilst protecting its national interest. Within FEFTA, foreign investors are divided into 3 categories:

- Foreign financial institutions
- General investors (including sovereign wealth funds and pension funds)
- Investors sanctioned under FEFTA or state-owned enterprises

Each of these investor categories has its own disclosure requirements depending on the issuer. Every listed issuer in Japan falls into one of these three categories:

- **Category 1:** companies subject to post-investment report only (i.e. non-designated business sectors);
- **Category 2:** companies conducting business activities only in the designated business sectors other than core sectors
- **Category 3:** companies conducting business activities in the core sectors

Under Japan’s FDI regime, foreign financial institutions only have to disclose if they acquire 10% of the voting rights or issued share capital of any listed issuer - this is regardless of sector as long as the exemptions are complied with.

- If the issuer is category 1, then a 10% disclosure is required
- If the issuer is category 2, disclosure is required at 1%, 3% and 10% and any increases above 10%
- If the issuer is category 3, disclosure is required at 1%, 3% and 10% and any increases above 10%. Additionally, pre-approval is also required from 10% and any subsequent increases.

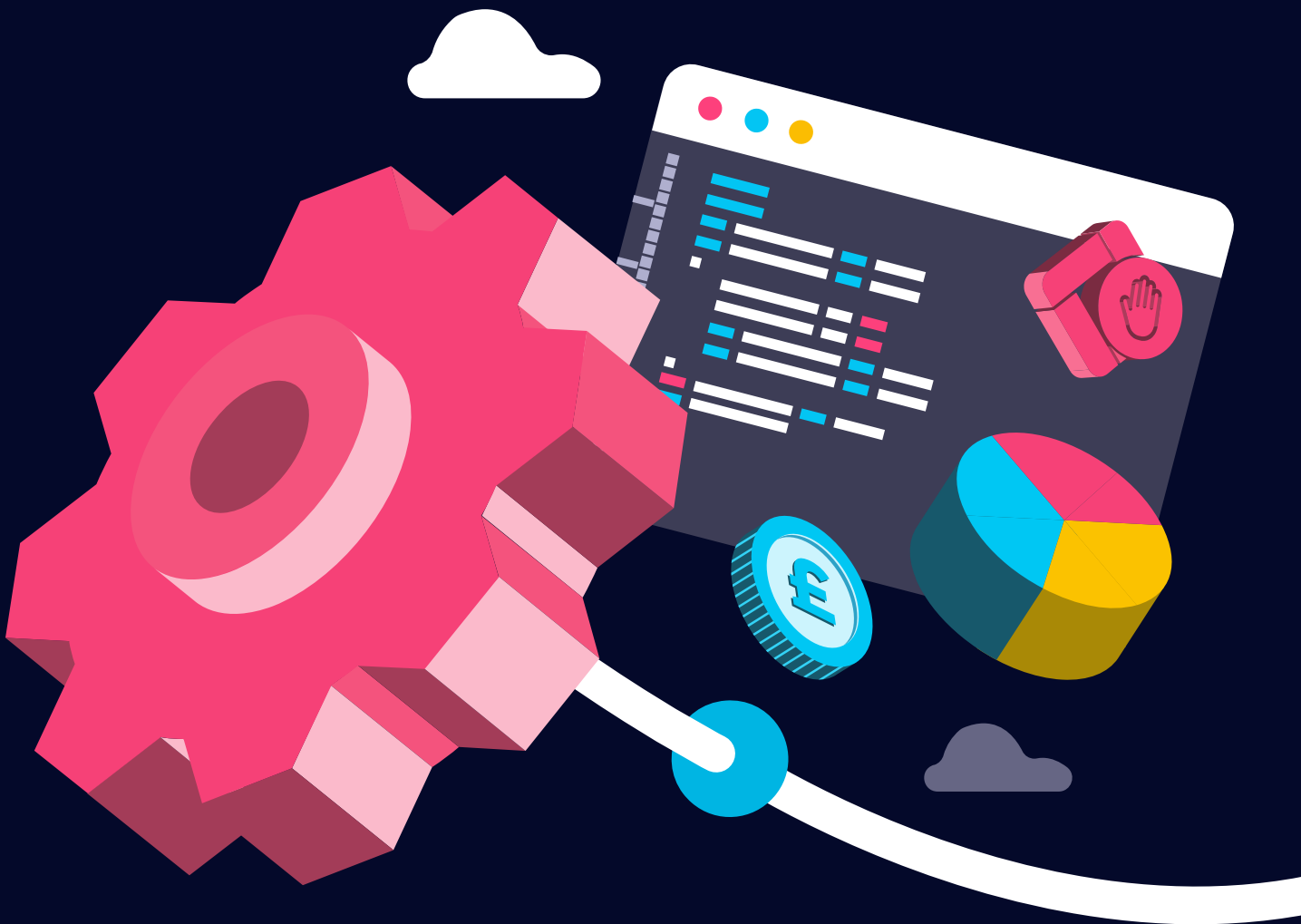
It’s worth noting that the 1% and 3% disclosures are only required the first time the threshold is crossed. In addition, investors sanctioned under FEFTA or state-owned enterprises are required to seek pre-approval and disclose any changes at 1% and above.



# The 5

# complexities

# of sensitive industries



## Defining which industries are sensitive in a given jurisdiction

1

Each jurisdiction considers different industries to be “sensitive” and will decide on how closely they want to monitor private interests in those industries.

For example, Bulgaria applies a 1% notification threshold in insurance companies while Greece applies a 1% threshold in media companies and a 10% threshold for insurance companies.

## One company can be classified under multiple industries

2

A single company can operate in a wide range of industries within a given jurisdiction. Therefore, a single company can be subjected to different limits.

For example, Tesco PLC is a supermarket chain, but they also have divisions in banking, credit, insurance, etc. Even companies like Harley Davidson have a capital investments arm.

## Issuer specific limits per industry

3

Many compliance teams are unaware that there are issuer specific restrictions within a specific industry.

For example, in Brazil there is a 30% hard stop for three banks: Banco Bradesco S.A, Itaú UniBanco Holding S.A and Banco do Brasil.

## Foreign ownership

4

Foreign ownership within specific industries will require further regulatory scrutiny.

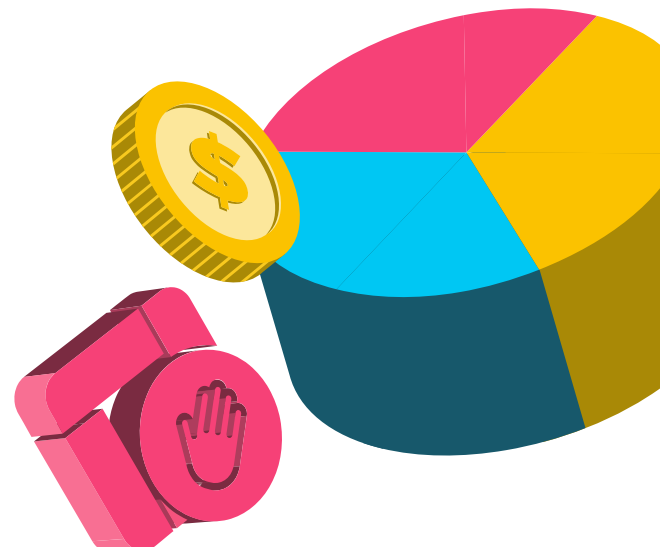
For example, in the defence industry in Denmark, Danish investors have a limit of 59% ownership, whereas foreign investors have a limitation of 20% ownership.

## Arcane industries

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Some jurisdictions enforce obscure laws which can be based on culturally specific values and customs.

For example, in Thailand, there are restrictions on companies that make Buddha casts and monk alms bowls. In Norway, there is a 20% pre-approval for waterfalls.

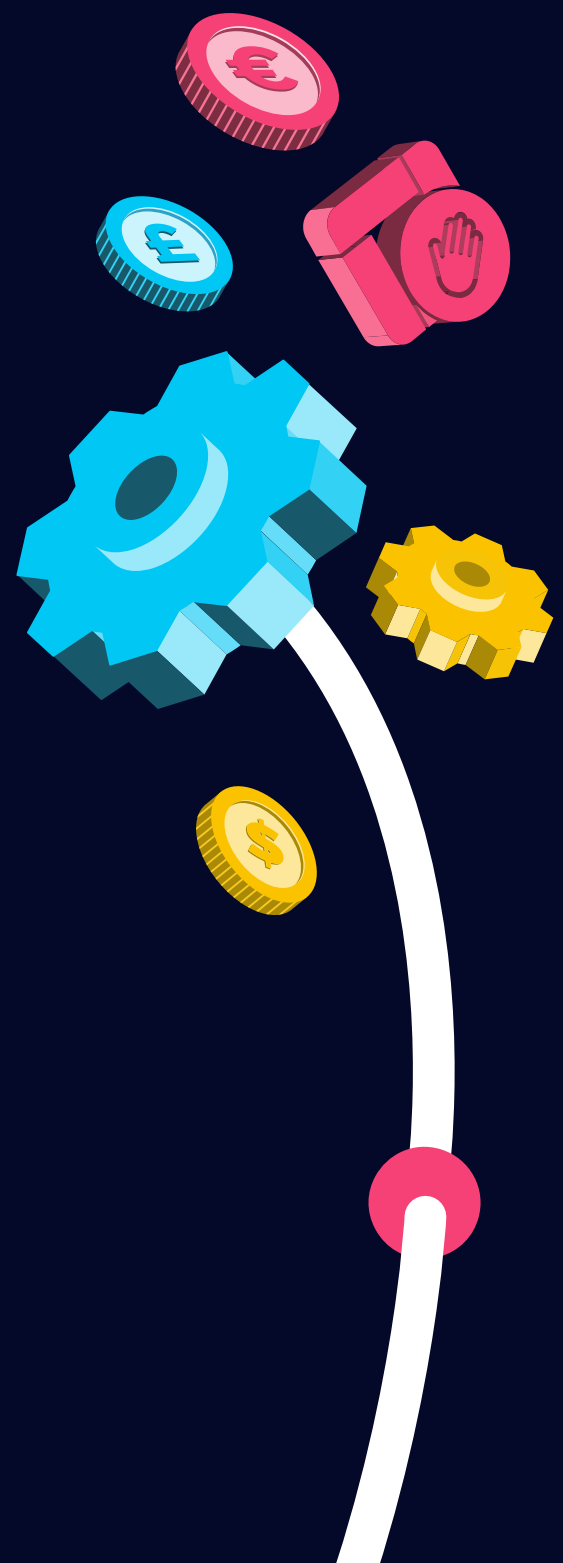


# How FundApps can help

Our [Sensitive Industries](#) service is the first of its kind to provide alerts for compliance professionals who have the burdensome task of meeting these industry-specific reporting requirements and restrictions.

We take legal information from aosphere (an affiliate of Allen & Overy) and our in-house team of regulatory experts map the restrictions to the Global Industry Classification Standards (GICS) codes at the industry level, resulting in robust investment threshold and limit monitoring for 69 different industries per jurisdiction.

We ensure compliance professionals reduce the time and cost associated with Sensitive Industries and Shareholding Disclosure with our powerful rules engine, reducing reputational risk and avoiding fines.



# Mitigate operational and **regulatory** risk and reputational damage with FundApps' regulatory **compliance** **solutions.**

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