FOREIGN DIRECT INVESTMENT REGULATIONS IN COMPARATIVE PERSPECTIVE: AN ANALYSIS OF SELECTED JURISDICTIONS.

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Abstract

This paper entails an analysis of the legal regulations of FDI in Canada, the United States of America and the United Kingdom in comparison with Nigeria. Foreign direct investment in these countries is subject to strict regulatory oversight to ensure national security, especially when foreign entities seek to acquire or gain control over businesses. This research adopts a qualitative method, analyzing legislation, such as Foreign Investment and National Security Act of 2007 (FINSA), Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018, Investment Canada Act alongside the oversight functions of the Committee on Foreign Investment in the United States (CFIUS) which aim to strike a balance between encouraging economic growth and safeguarding national interests. These statutes examine the procedures, review processes and criteria for national security threats, and the mitigation mechanisms available and comparative references are made to other jurisdictions, such as Nigeria. This study found out that despite the existence of legal regulations protecting FDI in some selected jurisdictions, Nigeria as a country can take a leap to improve on her FDI Regulations. The study recommends that a committee should be set up by the president that should look into foreign entities coming into Nigeria that might be a threat to National Security. The study further recommends that an investor's history of corruption should be considered a valid factor in determining potential threats to national security. In conclusion, the paper delves into the future directions for Nigeria's FDI legal framework. It considers ongoing efforts and potential reforms aimed at enhancing the investment climate.

Keywords: Multi-National Companies, Foreign Direct Investment, Investors, legal Regime, National security,

1. INTRODUCTION

Foreign Direct Investment (FDI) regulations are integral to understanding the mechanisms governing foreign direct investment. These regulations are important for potential foreign investors to study to understand how their investments may be managed and to ensure compliance with the local laws and regulations.[1] With the UK, Canada and the United States being Africa's most populous nation, it continues to attract an increasing number of FDI. Foreign Direct investment (FDI) therefore plays a very important role in the economic development of a nation and it is important for potential investors to understand the regulatory framework and landscape that are applicable.

This study entails an analysis of foreign direct investment regulations in Canada, the United States of America and the United Kingdom in comparison with that of Nigeria. These countries were chosen due to the fact that they are developed countries whose legal regulations of Foreign Direct Investment share similarities with that of Nigeria thereby making them suitable for this comparative analysis.

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2. LEGAL REGULATIONS OF FDI IN THE UNITED STATES OF AMERICA

Foreign investors who attempt to enter the United States market, or increase their current market position by acquiring an existing United States business, must comply with the laws regulating foreign direct Investment. Laws considered include the Foreign Investment and National Security Act of 2007[2] (FINSA),Committee on Foreign Investment in the United States, an intergovernmental entity known as CFIUS (or the Committee) and the Foreign Investment RiskReview Modernization Act (FIRRMA)2018.[3]These laws prohibit unfair aggregation of economic power which might weaken or destroy competition and also restrict foreign participation in some industry that has to do with national interest, such as The United States defence industry and other critical sector of the economy. The dangers of giving foreign investors access to national security information as well as the ability to control the production of defense materials outweigh the benefits of unrestricted investment in the defense industry.

2.1 The Foreign Investment and National Security Act of 2007

Section 721 of the Defense Production Act, also known as the Exon-Florio Amendment Act established a statutory framework for the United States Government to analyze foreign acquisitions, mergers, and takeovers transactions of privately-owned entities within the United States to determine whether such transactions affect the national security of the United States. The Foreign Investment and National Security Act of 2007[4] amends Section 721 for the purpose of strengthening the process by which such transactions are reviewed and investigated for national security concerns. In addition, the Act provides for a system of congressional notification so that congress is able to conduct proper oversight of the national security implications of foreign direct investment in the United States to ensure that it is beneficial and has no adverse impact on U.S. national security.[5]

The Act was enacted to ensure national security while promoting foreign investment, creation and maintenance of jobs, to reform the process by which such investments are examined for any effect they may have on national security, to establish the Committee on Foreign Investment in the United States, and for other purposes.[6] The President, or a presidential designee is authorized to conduct an investigation of a proposed acquisition of an American entity by a foreign person.[7] During this investigation, the President must determine whether there is credible evidence to support a finding that the change in control may result in actions that threaten national security and the President has the appropriate authority to protect national security.

The Act provides for guidance on certain transactions with national security implications including transactions that would result in control of critical infrastructure relating to United States national security by a foreign government or an entity

[2] 5 U.S.C 5315 and 552bss
[3]Pub. L. No. 115-232 1703(a)(4)(B)(iii)
[4]5 U.S.C 5315 and 552b
[5] http://www.ustreas.gov accessed 10 March 2025
[6]*Ibid*
[7] Section 2(1)bThe Foreign Investment and National Security Act of 2007

controlled by or acting on behalf of a foreign government. The federal government retains the right to place 'safeguards' on foreign investments when U.S. security is at risk.[8]

2.2 The Committee on Foreign Investment in the United States (CFIUS)

The United States has a longstanding commitment to welcoming foreign investment. President Bush's statement on open economies reaffirmed that commitment, recognizing that prosperity and security are founded on a country's openness.[9] CFIUS carries out its responsibilities within the context of this open investment policy. In the preamble to FINSA,[10] Congress states that the purpose of the Act is to ensure national security while promoting foreign investment and the creation and maintenance of jobs and to reform the process by which such investments are examined for any effect they may have on national security.[11]

The President and CFIUS has the authority to review any 'covered transaction,' defined in the regulations as any transaction that is proposed or pending after August 23, 1988, by or with any foreign person, which could result in control of a U.S. business by a foreign person.[12] The purpose of the national security reviews conducted by CFIUS is to allow CFIUS to identify and address any national security risk that arises as a result of a covered transaction, and, to request that the President determine whether to suspend or prohibit a covered transaction or take other action.[13]

CFIUS focuses solely on any genuine national security concerns raised by a covered transaction, not on other national interests. Section 721(b)(2)(E) of the Defense Production Act of 1950[14] as amended by the Foreign Investment and National Security Act of 2007[15] requires CFIUS to complete a review of a covered transaction within a 30-day period. In limited cases, following a review, CFIUS may initiate an investigation, which it must complete within a subsequent 45-day period. An investigation can be initiated only where: (a) CFIUS or a member of CFIUS believes that the transaction threatens to impair the national security of the United States and that threat has not been mitigated; (b) an agency designated by the Department of the Treasury as a lead agency recommends, and CFIUS concurs, that an investigation be undertaken; (c) the transaction is a foreign government-controlled transaction; or (d) the transaction would result in foreign control of any critical infrastructure of or within the United States, if CFIUS determines that the transaction could impair national security and that risk has not been mitigated.[16] With respect to

[8]American Bankers Association 'Risk and Compliance Conference'(June 102025) https://www.aba.com accessed 10 March 2025

[9]President Bush's Statement on Open Economies in Focus: Jobs & Economy 'Open Economies Policy Statement'<https://georgewbush-whitehouse>

[10]*Ibid*

[11] See the CFIUS website at https://www.treasury.gov accessed 10 march 2025.

[12] Federal Register Vol. 73, No. 236 Monday, December 8, 2008 / Notices

[13] Treasury Releases Final Regulations to Reform National Security Reviews for Certain Foreign Investments and Other Transactions in the United States, January 13, 2020, https://home.treasury.gov accessed 11 March 2025

[14]50 U.S.C. App. 2170

[15]50 USC 4565

[16]ChristopherTipler 'Defining National Security: Resolving Ambiguity in The CFIUS Regulations' (2014) Penn Carey Law: Legal Scholarship Repository

transactions described in (c) and (d) above, CFIUS would not initiate an investigation if the treasury department and any lead agency it has designated determine, at the Deputy Secretary level or higher, that the transaction will not impair the national security of the United States.[17]

CFIUS is authorized to enter into or impose, and enforce agreements or conditions to mitigate any national security risk posed by the covered transaction.[18] The President has the authority to suspend or prohibit a covered transaction. Pursuant to section 6(c) of Executive Order 11858[19], CFIUS refers a covered transaction to the President if CFIUS or any member of CFIUS recommends suspension or prohibition of the transaction, or if CFIUS otherwise seeks a Presidential determination on the transaction. In order to exercise the authority to suspend or prohibit a covered transaction under section 721, the President is required to show that there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security.

When looking to acquire an existing U.S. business, foreign investors basically have two options: Firstly, an advance notice to CFIUS wherethe foreign investor can agree to submit to CFIUS the details of its intention in advance of making an investment in the United States. The foreign investor at this time must disclose the nature, purpose, scope and expected closing date of the transaction. The assets to be acquired must be specifically described, and the investor must disclose information about itself, including a description of its business activities and any ties to foreign government agencies.[20]

Secondly, no advance notice to CFIUS if a foreign government is not directly involved, a foreign investor, unless otherwise mandated, can elect to proceed with an investment without first notifying CFIUS. However, the risk of this option is the possibility that CFIUS will later decide to review and reject the deal after it is complete. There is no time limitation on CFIUS' ability to review a finalized transaction, however when CFIUS becomes involved, there is a defined timeframe in which it can act.[21]

The majority of transactions in which CFIUS is given advance notice for review are cleared within 30 days. If the proposed transaction clears, CFIUS decision is final and cannot be reversed unless an investor misrepresented information or otherwise acted fraudulently. If after 30 days it is still unclear whether the transaction should be approved, CFIUS can take an additional 45 days to either clear the transaction, propose a mitigation plan to the parties or submit its recommendation to the President. Once a proposed FDI project is sent to the President, the President has 15 days to review the transaction and reach a final decision. Presidential decisions are not subject to judicial review.[22]

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[17]Final Regulations on Expanded Authority of CFIUS to Review Foreign Investor Transactions Go into Effect, National Law Journal (February 13, 2020) <https://www.natlawreview.com> accessed 10 March 2025

[18]https://home.treasury.gov

[19]Executive Order 11858

20Kelly M. Gortonand Burt Braverman 'Mandatory CFIUS Filing Requirement for Certain Foreign Investments Takes Effect; Exceptions for Canadian, Australian, and U.K. Investors' (2020)

[21]https://home.treasury.gov

[22]*Ibid*

If CFIUS determines that a transaction resulting in the foreign ownership or control of a U.S. business will have possible negative national security implications, the foreign investor can work to cooperate with the U.S. government to complete the transaction by making concessions. If successful, CFIUS and the parties will execute a 'mitigation agreement' instituting the changes necessary to satisfy national security concerns.[23]

CFIUS administers a voluntary notice system, allowing parties to a transaction to decide whether to initiate a CFIUS review by filing a voluntary notice under section 721. This distinguishes the CFIUS process from investment screening used in some countries such as Nigeria where all transactions that meet specified value thresholds or other criteria are subject to mandatory review by government agencies such as the Nigerian Investment Promotion Commission Act and the Corporate Affairs Commission.

To reassure parties that choose to file voluntarily with CFIUS that the sensitive and proprietary business information that they submit to CFIUS will be protected, section 721(c) prohibits CFIUS from disclosing to the public any information filed with CFIUS under section 721, except in certain legal proceedings. This includes the identity of filers and details of a notified transaction, as well as information provided to CFIUS in connection with a transaction never formally notified to CFIUS.[24]

When CFIUS determines that a proposed FDI transaction may result in foreign ownership or control of a U.S. business that will have negative national security implications, the foreign investor can request the opportunity to work with the U.S. government to complete the transaction to the mutual satisfaction of both parties. If successful, CFIUS and the parties will execute a mitigation agreement which outlines the changes necessary to satisfy any concerns regarding national security. CFIUS frequently requires mitigation agreements in the form of board resolutions, security control agreements, special security agreements, proxy agreements, and or voting trust agreements. Once a mitigation agreement is approved and the transaction is completed, CFIUS has the authority to continue monitoring ongoing compliance with the agreement. The critical threshold questions for a CFIUS review are: (i) whether there is foreign control over a U.S. business; (ii) if there is foreign control, whether the transaction may present any significant national security issues; and if there are national security concerns, whether they can be mitigated through contractual commitments from the transaction parties or other permissible means.[25]

2.3 The Foreign Investment Risk Review Modernization Act 2018(FIRRMA)

On August 13, 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)[26] was signed into law. FIRRMA significantly expands the authority of CFIUS to review future foreign investments in the United States. The reason was

[23]*Ibid*

[24]FarhadJalinous'Foreign direct investment reviews 2021: United States' (20 December 2021)https://www.whitecase.com accessed 10 March 2025

[25]James Brower, Nicholas Weigel 'Are CFIUS Decisions Legally Vulnerable' (January 16, 2025) < https://www.lawfaremedia.org> accessed 10March 2025

[26]Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII, Section 1702(c)(1).

based on concerns that the national security landscape has shifted in recent years, and so has the nature of the investments that pose the greatest potential risk to national security. As a result, an expanded scope of transactions subject to a review by CFIUS including noncontrolling investments by foreign persons in U.S. firms involved in critical technologies, critical infrastructure, and personal data related to specified industries and industrial sectors. [27]

Previously, CFIUS jurisdiction was limited to transactions that could result in foreign control of a U.S. business. While CFIUS retains this jurisdiction, FIRRMA broadens CFIUS's role by explicitly including for review: certain real estate transactions in close proximity to a military installation or U.S. government facility or property of national security sensitivities, any noncontrolling investment in certain U.S. businesses involved in critical technology, critical infrastructure, or collecting sensitive personal data on U.S. citizens, any change in foreign investor rights, transactions in which a foreign government has a direct or indirect substantial interest and any transaction or arrangement designed to evade CFIUS.[28]

According to a 2016 report by the Department of Commerce's International Trade Administration, 12 million U.S. workers, 8.5 percent of the labor force have jobs resulting from foreign investment, including 3.5 million jobs in the manufacturing sector alone. [29] Foreign investment provides substantial benefits such as productivity, innovation, and job creation to the U.S. However, there is growing concern regarding national security risks related to these foreign investments, particularly when the investments come from countries such as China and Russia. FIRRMA aims to protect national security, public order, and strategic interests by scrutinizing those investments that may lead to foreign control over critical infrastructure, technology, or resources.[30]FIRRMA imposes stringent review processes for foreign investments, requiring disclosure and assessment of potential risks. The act is intended to promote transparency and safeguard strategic interests, but it also adds layers of regulatory compliance for international investors, potentially affecting global investment flows and business operations.

A key takeaway from FIRRMA and the new regulations is that filing remains primarily a voluntary process. Mandatory filing applies to transactions within two specific categories: investments by any investor (subject to certain exemptions) in certain technology, infrastructure, and data businesses involved with critical technologies and certain investments by foreign investors with substantial foreign government ownership (subject to certain exemptions) in any U.S. business. Failure to make a mandatory filing on the above mentioned may incur civil penalties not to exceed $250,000 or the value of the transaction, whichever is greater.[31]

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[27] Rafeal Gunfield 'The Expanding Scope of CFIUS's Jurisdiction and Mandatory Reporting' (January 12, 2023) https://www.clm.com accessed 10 March 2025

[28]David Mortlock, Noman Goheer, Ahmad El-Gamal 'Expanded CFIUS Jurisdiction Under FIRRMA Regulations: An Overview' (2009) <https://www.willkie.com>accessed 10 March 2025

[29]Everything You Need to Know About the Foreign Investment Risk Review Modernization Act (FIRRMA) January 2025 < https://sayari.com/> accessed on march 11 2025

[30]Farhad Jalinous'CFIUS Finalizes New FIRRMA Regulations' (White Case22 January 2020)https://www.whitecase.com accessed 10 March 2025

[31]Winston and Straw LLP 'Impact of New CFIUS Rules' February 13, 2020) https://www.winston.com accessed 10th March 2025.

A primary focus of FIRRMA is to prevent the theft of trade secrets and intellectual property of U.S. companies as well as to keep foreign companies from investing in or purchasing assets near U.S. military bases. FIRRMA expands the CFIUS review process and will likely make it more difficult for foreign companies to successfully invest in the U.S. if national security interests are potentially at risk.[32]

Parties now face a more challenging and complex analysis when deciding whether they need to file for clearance under the new FIRRMA regulations. The underlying issue is that transactions are no longer limited to those that result in the foreign control of a business. CFIUS can now look at transactions where there is less foreign control by the investor.

2.4 Federal Restriction on Foreign Ownerships

There are certain sectors that are often protected by restrictions on foreign control of certain types of businesses due to military and political interests. Since 'foreign control' is not defined, foreign investors must carefully investigate the scope of these provisions when examining possible U.S. acquisitions in areas such as natural resource excavation, communications, and national defense. For example, the Mineral Lands Leasing Act of 1920 contains a provision that prohibits the Secretary of the Interior from granting excavation leases to aliens whose nation does not allow similar or like privileges to U.S. citizens or corporations.[33]

Federal restrictions on foreign ownership also protect industries vital to the national defense when the industry provides materials required by current defense contracts, or the industry is crucial to the maintenance of a healthy economy and the operation of the national government. For example, the Atomic Energy Act of 1954 provides that while a foreign entity may not obtain a controlling interest in a nuclear facility, the Nuclear Regulatory Commission may allow a foreign enterprise to maintain substantial interests in such facilities.[34] For political and national security reasons, the United States Congress has historically shielded key industrial sectors within the U.S. economy so as to restrict, or in some cases block foreign direct investment (FDI) from non-U.S. investors and governments.

Examples are: Airlines where the U.S. Department of transportation has established limits on foreign ownership in U.S.-based air carriers.[35], transportation in title 46 of the United States Code outlines certain barriers to FDI in the U.S. maritime industry. Mining, the Mineral Leasing Act of 1920[36] (as amended) governs the disposition of certain U.S. natural resources and defines what opportunities are open to foreign investors. The Deep-Water Ports Act of 1974[37] as amended restricts FDI to certain defined levels in deep water oil and liquid natural gas ports. On Defense, Executive Order No. 12829, the National Industrial Security Program, defines which contractors

[32] Section 9(1)Foreign Investment Risk Review Modernization Act of 2018.
[33]Jonathan Bonnitcha Suzy Nikiéma 'Rethinking National Investment Laws A study of past and present laws to inform future policy-making' (2023) 4 International Institute for Sustainable Development 4
[34]ibid
[35]Jon Bateman 'U.S China Technological Decoupling: A Strategy and Policy Framework' (Endowment for International Peace 2023) <https://carnegieendowment.org > accessed 10 March 2025
[36]30 U.S.C. § 181
[37]33 U.S.C. 1501

may access U.S. government classified information and which companies are barred under 'foreign ownership, control or influence' (FOCI). On Communications & Media, the Communications Act of 1934[38] (as amended) restricts the percentage of ownership which is permitted for a foreign corporation or investor seeking U.S. communications licenses, including broadcast, wireless personal computer systems, cellular and aeronautical.

On Nuclear Energy, this is a highly complex and regulated area, and FDI in the nuclear energy field is significantly limited. On Agriculture, the Agricultural Foreign Investment Disclosure Act of 1978[39] outlines the requirements when a foreign person desires to acquire an interest in 10 or more acres of agricultural land in the United States. On Banking, the banking sector of the U.S economy is highly regulated with respect to foreign financial institutions. See the International Banking Act as amended by the Foreign Bank Supervision Enhancement Act of 1991.[40]

On Real Estate, a foreign investor needs to understand that the U.S. maintains a comprehensive set of laws designed to protect the environment. Any domestic or foreign investor who purchases title to U.S. real estate may be legally obligated to remediate or clean-up any existing environmental problems on or within the property, even if those problems were caused by prior owners. For example, sites where former industrial plants once operated or older buildings which contain asbestos or other hazardous materials will pose significant and often costly risks of remediation to the purchaser. This is why before foreign investors decide to purchase real estate in the U.S. comprehensive due diligence needs to be conducted in order to confirm whether any environmental problems exist on the targeted property.

3 **LEGAL REGULATIONS OF FDI IN CANADA**

3.1 **Investment Canada Act (ICA)**

The Minister of Innovation, Science and Economic Development is primarily responsible for the administration and enforcement of the ICA. The Minister of Canadian Heritage is responsible for the administration and enforcement of the ICA where the investment or proposed investment involves a cultural business.

The Foreign Investment Review and Economic Security (FIRES), which is part of the Ministry of Innovation, Science and Economic Development Canada (ISED), is the government department responsible for the administration of the Investment Canada Act (ICA), The Investment Canada Act (ICA)[41] regulates FDI and indirect foreign investments in Canadian businesses by non-Canadians. The ICA is a statute of general application that applies to any acquisition of control of a Canadian business by a foreign investor.

Section 5 of the Act provides that the Invest in Canada hub's mandate is for the purpose of supporting economic prosperity and stimulating innovation in Canada, to promote foreign direct investment in Canada, attract and facilitate investment and coordinate the efforts of the government, the private sector and other

[38] SEC. 147 U.S.C. 15
[39]7 USC Ch. 66:
[40] P.L. 102-242, 105 Stat. 2236, 2303-04 (Dec. 19, 1991).
[41] S.C. 2017, c. 20, s. 442

stakeholders with respect to foreign direct investment in Canada. The Act makes provision for the creation of an Investment Hub which has the function of(a) develop and implement a national strategy to attract foreign direct investment to Canada (b) create and maintain partnerships with any department, board or agency of any government in Canada, the private sector in Canada or any other Canadian stakeholder with an interest in foreign direct investment in order to optimize the benefits of any programs, resources and services that are offered with respect to foreign direct investment (c) plan, direct, manage and implement activities, events, conferences and programs to promote Canada as an investment destination (d) collect, prepare and disseminate information to support the decisions of foreign investors with respect to foreign direct investment in Canada; and provide services in a coordinated manner to foreign investors with respect to their actual or potential investments in Canada.

On 22 March 2024, the Investment Canada Act was amended, following royal assent, this amendment ushered in a modernization package aimed at enhancing the Foreign Direct Investment (FDI) screening mechanism.[42] Key modifications introduced by the Bill include: The implementation of a pre-closing filing requirement in specific sectors deemed sensitive to national security or economic stability and an increase in penalties for non-compliance with the Act's provisions.

The Minister of Innovation, Science, and Industry is vested with expanded powers concerning foreign investments. These powers include the authority to: a) Impose interim conditions on an investment during the national security review process. b) Accept binding commitments from investors aimed at mitigating potential national security risks associated with the investment. The new legislation facilitates greater international cooperation and information exchange related to foreign investment reviews and national security assessments.[43]

The criteria for FDI review have been updated to consider intellectual property rights developed with governmental support and the use and protection of personal information of Canadians. An investor's history of corruption is now considered a valid factor in determining potential threats to national security. The amendment clarifies that the scope of FDI screening also covers asset sales.

If the relevant financial threshold under the ICA is exceeded (subject to certain exceptions), the statute provides for a process of pre-merger review and approval of foreign investments to determine if they are of net benefit to Canada, also referred to as net benefit review. The indirect acquisition of a Canadian business through the acquisition of a foreign non-Canadian parent is typically exempt from having to obtain approval.[44]

Where approval is required, the investor must file an application for review and the transaction must be approved by the relevant minister. A key element in the

[42] UN Trade and Development Investment Policy Hub ‘Tightens the FDI screening regime’ (03 Sep 2024) <https://investmentpolicy.unctad.org> accessed 10March 2025.
[43]Baker and Mackenzie‘Canada: Key Insights and Outlook Foreign Investment 2024 Year in Review’ (January 13, 2025) https://foreigninvestment.bakermckenzie.com accessed 10 March 2025
[44]White and Case ‘Foreign direct investment reviews 2023: Canada’ (20 March 2023) https://www.whitecase.com accesses 10 March 2025

application for review is the requirement to set out the investor's plans for the Canadian business, including plans related to employment, participation of Canadians in the business and capital investment. An application for review is a much more detailed document than a notification.

Where approval is not required, the investor has an obligation only to file a simple administrative notification form, which can be filed up to 30 days after closing. In either case, filing of an application for review or just a notification, the Canadian government has jurisdiction for 45 days after receipt of such a filing to order a national security review if there are concerns.[45]

The Canadian government has the power to review any transaction, including minority investments, in which there are reasonable grounds to believe that an investment by a non-Canadian could be injurious to national security. Unlike the net benefit review process under the ICA, there is no financial threshold for investments under the ICA's national security review regime.

In assessing whether an investment poses a national security risk, the Canadian government considers factors that focus on the potential effects of the investment on defense, intelligence, sensitive technology, sensitive personal data, critical minerals and critical infrastructure and supply. The Canadian government also focus on transactions related to public health or involved in the supply of critical goods and services to Canadians or to the Government of Canada.

Transactions that run the risk of raising national security concerns can seek clearance by making any ICA filings well before the proposed time of closing at least 45 days, although giving the officials more time to review would be prudent.[46] Under section 25(3) of the ICA, the government has to notify the investor of an order for a national security review without delay after the order has been made. When considering filing and closing timelines, it is recommended that the investor allow for at least one additional business day following the expiry of the 45-day waiting period.[47]

Where a transaction gives rise to national security risks, non-Canadian investors should consider filing notice of the transaction with the minister at least 45 days plus one business day prior to closing to obtain pre-clearance (assuming the minister does not seek further time under the national security review regulations). For an investment that does not require notification, such as a minority investment, the Canadian government encourages non-Canadian investors to contact FIRES at the earliest stage of the development of their investment projects to discuss their investment.

As in other jurisdictions, it is therefore critical for foreign investors to consider Canadian national security review issues in planning and negotiating transactions. In particular, an investor should ensure that it secures a closing condition predicated on

[45] SusanHutton and Megan Macdonald ‘Stocking Canada's Foreign Investment Review Toolbox: The Future of The Investment Canada Act’ (2012) Vol 25(1) Canadian Competition Law Review3
[46]Aird &Berlis LLP ‘Doing Business in Canada: Regulation of Foreign Investment and Merger Regulation’ (2023)<https://www.airdberlis.com> accessed 10March 2025
[47]*Ibid*

obtaining national security clearance in Canada, where appropriate. It may also be appropriate for merging parties to allocate the national security risk.[48]

3.1.1 Review of Foreign Direct investment under the Investment Canada Act ('ICA')

The review of foreign investment in Canada is governed primarily under the Investment Canada Act which sets out the processes for three types of review of foreign investments: economic; cultural and national security. The economic provisions of the ICA provides that every acquisition of control by a non-Canadian of a Canadian business, even where the target business is already controlled by a non-Canadian, requires either an administrative notification (which can be filed up to 30 days post-closing) or a detailed pre-closing review (during which time closing of the investment is prohibited). Whether a transaction is subject to notification or review depends on whether certain financial and ownership thresholds are met.[49] The applicable financial threshold to a given transaction depends on several factors, including the structure of the transaction, the value of the transaction or business and the investor or vendor (including the nationality and the investor's potential status as a state-owned or state-influenced entity).

If an investment requires review, it must be approved by the federal government on the basis that it is likely to be of 'net benefit' to Canada. Such a 'net benefit' requires that the investor provide legally binding undertakings regarding the future conduct of the acquired business. For an investment in a Canadian business that has activities related to Canada's cultural heritage or national identity, the Minister of Canadian Heritage has jurisdiction to review the investment.[50]

The cultural business review thresholds are much lower than the economic review thresholds, Cultural review is separate from economic review and where it is required, the Minister must approve the transaction on the basis that it is likely to be of 'net benefit' to Canada. Such approval typically requires that the investor provide binding undertakings relating to cultural matters.[51]

On National Security, there is no separate mandatory process requiring pre-clearance or separate filings for transactions that raise or may raise national security concerns. When either a review or notification under the ICA is filed with the federal government (under the economic or cultural provisions of the ICA), the investment will also be screened for possible national security concerns. Transactions that do not trigger a notification or review requirement (including where they do not result in a change of control of a Canadian business, such as minority investments) can also be subject to a review for national security concerns if the transaction comes to the attention of the Government, or if the investor chooses to notify the Government

[48]Mark Katz and Charles Tingley 'Foreign Investment Review in Canada' March 4, 2022 <https://competitionlawblog.
kluwercompetitionlaw.com> accessed 10 March 2025
[49]Hoskin & Harcourt LLP 'Frequently Asked Questions Concerning the Investment Canada Act' (March 2023) <https://www.osler.com> accessed 10 March 2025
[50]James Musgroove 'Net Benefit Reviews Under the Investment Canada Act: Some Practical Thoughts' (June 2023) https://mcmillan.ca accessed 10 March 2025
[51]*Ibid*

pursuant to the recently enacted voluntary filing mechanism under the ICA, which came into force in August 2022.[52] A national security review of an investment may be ordered if the Minister of Innovation, Science and Industry believes the investment could be injurious to Canada's national security which is not defined in the ICA.

3.2 The Foreign Investment Protection and Promotion Agreements (FIPA)

Canada has entered into various Foreign Investment Protection and Promotion Agreements with six European Union (EU) Member States (the Czech Republic, Hungary, Latvia, Poland, Romania and Slovakia).[53] In 2003, the European Commission requested that acceding member states bring their FIPAs with Canada into conformity with EU law. The Czech Republic, Hungary, Latvia, Poland and Slovakia became EU members in 2004, while Romania joined in 2007.[54] These agreements provide protections for foreign investors by ensuring they are treated fairly and equitably, protecting their investments from discriminatory or unfair treatment, and providing access to dispute resolution mechanisms. FIPAs aim to: guarantee fair and equitable treatment for foreign investors, ensure protection against expropriation without compensation, provide dispute resolution mechanisms (such as international arbitration in case of conflicts.[55]

3.3 Sector-Specific Regulations

Certain industries in Canada are subject to specific regulations regarding foreign investment. These sectors include: telecommunications where foreign ownership in telecommunications companies is subject to specific limits under the Telecommunications Act.[56]

In transportation foreign ownership in Canadian airlines and air carriers is limited under the Canada Transportation Act.[57]Under banking and financial services, foreign investment in the banking and financial services sector is regulated by the Bank Act, which sets limits on the percentage of control that can be held by foreign entities.[58]In Energy and Natural Resources, some provinces have specific regulations regarding foreign investment in natural resource industries, particularly oil, gas, and mining.[59]

4. LEGAL REGULATIONS OF FDI IN THE UNITED KINGDOM

The UK encourages foreign direct investment with the department of International Trade actively promotes direct foreign investment, and prepares market information for a variety of industries. The regulatory landscape of Foreign Direct Investment in the UK involves a balance of promoting investment while safeguarding national security,

[52]*Ibid*
[53]Global Affairs Canada 'Canada EU6 Foreign Investment Promotion and Protection Agreement (FIPA) Negotiations (November 2024) https://www.international.gc.ca accessed 10March 2025
[54]*Ibid*
[55]Gilbert Gargine 'The Canadian Policy on the Protection of Foreign Investment and the Canada-China Bilateral Investment Treaty' (2019) Vol 25 (1) Beljin law review 3
[56]*Ibid*
[57]*Ibid*
[58]*Ibid*
[59]*Ibid*

competition, and the economy. The National Security and Investment Act 2021[60] and the oversight of regulatory bodies like the Competition and Markets Authority (CMA) and the Financial Conduct Authority (FCA) are crucial in maintaining that balance. Additionally, sector-specific laws ensure that sensitive industries, such as defense, telecommunications, and energy, remain under close scrutiny for foreign involvement.

4.1 The National Security and Investment Act 2021

The National Security and Investment Act 2021 (NSI Act)[61] is a significant piece of legislation allowing the UK Government to scrutinize and potentially block acquisitions and investments in sensitive sectors or locations which could impact upon national security. The NSI Act came into force on 4 January 2022. The NSI Act gives the UK Government the ability to block or apply conditions to certain transactions. Although the Government will not usually use its powers under the NSI Act to block transactions, the impact on deal timelines could be significant, with the NSI Act requiring notification of relevant transactions prior to completion.[62]

The NSI Act defines 17 high risk sectors. The 17 sectors are advanced materials, advanced robotics, artificial intelligence, nuclear communications, computing hardware, critical suppliers to government, cryptographic authentication, data infrastructure, defence, energy, military and dual-use technologies, quantum technologies, satellite and space technologies, critical suppliers to the emergency services, synthetic biology, and transport.[63] Where target businesses operate in any of the identified high risk sectors, a mandatory notification may be required.

Notifications under the NSI Act must be made to the Investment Security Unit (ISU) which sits within the Cabinet Office. After a notification has been submitted, the ISU will confirm whether the notification has been accepted or rejected. Once a notification form has been accepted, the ISU will decide within an initial 30 working day review period starting on the date the notification is accepted either to: (a) clear the transaction; If the ISU decides to clear the transaction at this stage, notice will be given to the parties before the end of the review period, confirming that no further action will be taken under the NSI Act. During this period, the ISU will carry out a detailed assessment of the potential national security risks and decide what, if any, action it considers necessary and proportionate to address any of these risks. The ISU may extend the assessment period for an additional period of 45 working days. This means that the statutory timetable for review is potentially up to 105 working days, although the overall assessment period could also be longer. Requests for further information are issued (which will have the effect of pausing the statutory timetable), or if the ISU and the parties agree a voluntary period for further scrutiny after the additional 45 working day period ends.

Failure to submit a mandatory notification when required will render the relevant transaction void, as well as providing grounds for civil and criminal penalties.

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[60] National Security and Investment Act 2021 (c. 25)
[61] *Ibid*
[62] Simon Ward 'Could the UK's National Security and Investment Act affect your business?' (25th September 2024)https://www.farrer.co.uk accessed 10 March 2025
[63] Section 8 NSI Act

Transactions falling within the mandatory regime therefore require clearance prior to completion. At present, the mandatory notification regime only applies to acquisitions of control over qualifying entities and does not apply to acquisitions of qualifying assets.

The UK government has powers to call in for review any in-scope transaction whether or not there is a reasonable suspicion that it could give rise to a risk to national security.[64] A call-in notice may be issued at any time while the transaction is in progress or contemplation, or within a specified period following its completion. If a national security risk has been found, the UK government can make a final order to block a transaction (or require a transaction to be unwound). Although the NSI Act applies in principle to domestic as well as foreign bidders, the focus of the regime is clearly foreign investment.[65]

4.2 Competition and Markets Authority (CMA)

The UK Competition and Markets Authority reviews large mergers and acquisitions to ensure that they do not substantially reduce competition in the UK market.[66] If a foreign acquisition is large enough, the CMA can intervene if it believes the transaction would result in less competition in the UK market, potentially harming consumers. Subject to Specific Regulation, certain sectors in the UK are subject to specific regulatory frameworks, especially where foreign investments may be deemed more sensitive. Examples of these include telecommunications, energy and utilities, defense and financial Services[67]

4.3 **The Companies Act 2006**

The Companies Act governs how businesses, including foreign-owned companies, operate in the UK. This includes the registration of companies[68], the duties of directors, and the rights of shareholders. While this law is not specifically designed for FDI, it provides a framework within which all companies, including those owned or controlled by foreign investors, must operate. Section 76E of the Companies Acta prevents the registration of a company under this Act by a name if the Secretary of State is satisfied that the registration of the company by that name is necessary (a)in the interests of national security, or (b)for the purposes of preventing or detecting serious crime.

4.4 Investment Incentives in The United Kingdom

The UK offers a range of incentives for companies of any nationality locating in depressed regions of the country, as long as the investment generates employment. The UK government has a general policy of encouraging FDI, as foreign investment is seen as vital for economic growth, creating jobs, and supporting innovation.[69]

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64 Section 1(1) NSI Act 2021
65 *Ibid*
66 https://www.gov.uk accessed 10 March 2025
67 *Ibid*
68 Section 7 (2) Companies Act 2006
69 Department for Business and Trade 'Invest 2035: the UK's modern industrial strategy' (November 2024)

Various incentives, including tax breaks and funding opportunities, may be available depending on the region and sector. UK Trade and Investment (UKTI**)** department promotes FDI and supports foreign businesses setting up or expanding in the UK. UKTI provides advice, incentives, and support services for investors.[70] UKTI works with its partner organizations in the devolved administrations Scottish Development International, the Welsh Government and Invest Northern Ireland and with London and Partners and Local Enterprise Partnerships (LEPs) throughout England, to promote each region's particular strengths and expertise to overseas investors.

Separate legislation, granting similar powers to local authorities, applies to Scotland and Northern Ireland. Where available, Local authorities in England and Wales also have power under the Local Government and Housing Act of 1989[71] to promote the economic development of their areas through a variety of assistance schemes, including the provision of grants, loan capital, property or other financial benefit.

5. COMPARATIVE ANALYSIS OF THE LEGAL REGULATIONS OF FDI OF SELECTED JURISDICTION

The legal regulations of Nigeria, UK, USA, and Canada are compared, highlighting areas of similarities and differences. A comparison is also made between Nigeria, USA and UK because they all have regulators regulating FDI in Nigeria.

All four nations generally welcome foreign investment and recognize its potential to contribute to economic growth, job creation, and technological advancement. While specific sectors might have restrictions, the overall policy is one of encouragement. All four countries provide some level of protection against the arbitrary nationalization or expropriation of foreign investments. While the specifics of compensation and due process may vary, the principle of protecting foreign property rights is generally upheld.

Each country has established agencies or mechanisms to facilitate foreign investment such as the Nigerian Investment Promotion Commission in Nigeria, while the US has the Committee on Foreign Direct Investment United States and Cana has its own ministry of science and Innovation. Foreign investors are subject to the same general laws and regulations governing business operations within each country, including company law, tax law, labor law, environmental regulations, and intellectual property rights. All four countries have established legal systems and procedures for resolving commercial disputes, which are accessible to foreign investors. They are also signatories to international conventions on dispute resolution, such as the International Centre for Settlement of Investment Disputes (ICSID) Convention.

< https://www.gov.uk> accessed 10 March 2025

[70] *Ibid*

[71] Local Government and Housing Act 1989 C42

5.1 Differences in FDI Regulations of selected Jurisdictions in Comparison with Nigeria

Significant differences exist in the specific legal frameworks and approaches to FDI in these countries. In Nigeria there's a 'negative list' prohibiting investment in specific sectors. The oil and gas sector, while allowing 100% foreign ownership, often operates through joint ventures or production-sharing agreements with the government. In the UK**,** Certain sectors, such as defense, telecommunications, and energy, may be subject to stricter scrutiny under the National Security and Investment Act. USA also hasrestrictions exist in sectors deemed critical to national security, such as defense, aviation, and critical infrastructure. Canadahas specific restrictions and ownership limitations in sectors like telecommunications, broadcasting, financial services, and transportation.

Registration with the NIPC is mandatory for companies with foreign investment. However, The UK has a relatively open investment regime. The National Security and Investment Act 2021 allows the government to scrutinize and intervene in investments that could pose a national security risk. This is a more recent development, giving the government broader powers than before. In the United States of America**,** The Committee on Foreign Investment in the United States (CFIUS) reviews foreign investments for potential national securityconcerns. CFIUS has broad authority to investigate and recommend actions to the President, including the suspension or prohibition of transactions. The scope of CFIUS review has expanded in recent years to include non-controlling investments and real estate transactions near sensitive locations.Furthermore, Canada has the Investment Canada Act, which requires notification or review of certain foreign investments based on transaction size and the nature of the business. Investments that could be injurious to national security are also subject to review. The thresholds for review vary depending on the investor's country of origin and the industry.

As regards Investment Incentives, Nigeria offers various investment incentives, including tax holidays for pioneer industries, allowances for capital investments, and deductions for interest on loans in specific sectors like gas. UKOffers incentives primarily through tax policies, research and development credits, and regional development grants. Specific incentives may be available for investments in designated areas or sectors. USA also offersInvestment incentives including tax credits, abatements, and grants for specific industries, job creation, and research and development. CanadaOffers a range of incentives, including tax credits for research and development, regional development programs, and sector-specific support for industries like clean technology and manufacturing..

5.2 Lessons to be Learnt from the Comparative Analysis of Selected Jurisdictions

Having analyzed the relevant laws on FDI in Canada, the USA and UK, a number of grey areas can be identified in the Nigerian legal framework. Firstly, jurisdiction such as Canada, an investor's history of corruption is now considered a valid factor in determining potential threats to national security and before such an investor can invest in that country.

The United States of America has a Committee on Foreign Direct Investment which looks at a proposed transaction to ensure that while promoting foreign investment such investment is examined for any effect they may have on national security. Before any foreign entity comes into Nigeria to invest, the Nigerian Government under the Ministry of Trade and Investment should look at the proposed transaction and see if there's any threat against National Security and a foreign transaction should be analyzed to determine if it has a threat to National Security. A committee should be set up by the president or the ministry of trade and Investment that should look into foreign entities coming into Nigeria to do business, as such investment might be a threat to National Security.

The United Kingdom scrutinizes and potentially blocks acquisitions and investments in sensitive sectors or locations which could impact upon national security, Nigeria should also do same by blocking any foreign investment that has impact on National Security. Also, the Nigerian Investment Promotion Commission Act has some sectors that are termed prohibited, whereby foreign investors are prohibited from investing in such sectors such as Production of arms and ammunition, Production of and dealing in narcotic drugs and psychotropic substances, production of military and paramilitary wears including those of the police, customs, immigration and prison. Furthermore, in the United States of America, some sectors are restricted from foreign investment such as Airlines, Transportation. Mining. Ports Defense. Communications & Media, nuclear energy, agriculture, banking and real estate.

Similar institutions can be replicated in Nigeria in order to promote national security in the area of Foreign Investment. Care should, however, be taken to ensure that the regulatory powers distribution among these institutions is structured in such a way as to prevent overlapping powers and functions which can lead to confusion. A committee should be set up by the president or the ministry of trade and Investment that should look into foreign entities coming into Nigeria to do business, and such investment that might be a threat to national security. This should be done with strict regards to ethical standards and international best practices. These committees must be comprised of independent professionals with proven integrity. The policies and guidelines created by these committees should be strictly adhered to by foreign investors and amended periodically as the need arises.

6.**CONCLUSION**

In conclusion, while Nigeria, the UK, the USA, and Canada all aim to attract FDI, their legal regimes differ significantly in terms of screening processes, sector restrictions, incentives, and the practical application of laws. Ambiguities exist in each system, which foreign investors need to carefully navigate through thorough due diligence and legal counsel. Understanding these nuances is crucial for successful investment and risk management in these diverse economic landscapes