Baker McKenzie.

A new reality

Chinese FDI into Europe and North America during a time of tightening regulation

TRANSACTIONAL POWERHOUSE

Leading and closing three deals a day

Introduction

China is increasingly reaching out to the world

Chinese businesses continue to seek access to markets, natural resources and foreign knowhow; and, of course, opportunities to drive returns on financial investments.

But slowing domestic economic growth and tightening regulation – at home and abroad – are changing the global environment for outbound Chinese investment.

To help organizations make the right decisions in this evolving climate, Baker McKenzie and Rhodium Group have analyzed the latest trends in Chinese outbound foreign direct investment (FDI).

Our fourth annual China FDI report explores:

- the shifts in the investment landscape
- the forces driving change
- what buyers and sellers can expect in the future

As the world interacts with China, agile and imaginative firms that apply the right strategies to emerging opportunities will see the greatest success.

About Baker McKenzie

We provide commercially focused, end-to-end legal advice to maximize deal certainty and secure the intended value of transactions. As the world's largest M&A practice, our lawyers across 46 jurisdictions have a long history of advising Chinese enterprises on their outbound investments.

About Rhodium Group

Rhodium has one of the largest independent China research teams in the private sector, with a consistent track record of producing insightful and path-breaking analysis.

Get in touch

China

Bee Chun Boo
+ 86 10 6535 3913
bee.chun.boo@bakermckenzie.com

Tracy Wut
+ 852 2846 1619
tracy.wut@bakermckenzie.com

Howard Wu
+ 86 21 6105 8538
howard.wu@bakermckenzie.com

Stanley Jia
+ 86 10 6535 9393
stanley.jia@bakermckenzie.com

North America

Rod Hunter
+ 1 202 452 7084
rod.hunter@bakermckenzie.com

Michael De Franco
+ 1 312 861 8230
michael.defranco@bakermckenzie.com

Alan Zoccolillo
+ 1 212 626 4374
alan.zoccolillo@bakermckenzie.com

Europe

Thomas Gilles
+ 49 69 2 99 08 501
thomas.gilles@bakermckenzie.com

Will Holder
+ 44 20 7919 1455
william.holder@bakermckenzie.com

Maite Diez
+ 34 91 391 59 55
maite.diez@bakermckenzie.com

Marco Marazzi
+ 39 02 76231 481
marco.marazzi@bakermckenzie.com

Christian Atzler
+ 49 69 2 99 08 124
christian.atzler@bakermckenzie.com

Peter Lu
+ 44 20 7919 1300
peter.lu@bakermckenzie.com

Stephane Davin
+ 33 1 44 17 53 24
stephane.davin@bakermckenzie.com

Baker McKenzie.

Chinese FDI into Europe and North America

Key trends in 2018

1. Chinese FDI in North America and Europe hits a 6-year low

What is the trend?

Despite deal volumes holding steady, investment levels in 2018 continued the steep fall seen the previous year. Having reached record highs in 2017, these are now at their lowest ebb for six years.

What is the context?

Deal numbers have been stable in Europe for the last five years and dropped only slightly in North America.

But tightening controls in China, and growing regulatory scrutiny in key investment destinations, dampened transaction values in 2018. Overall levels of FDI into the two regions have fallen as a result.

What does the data say?

- Deal volumes have been broadly stable in Europe during the past five years.
- In North America, they were down 20% last year from 2014 levels but recovered slightly in 2018.
- Average deal size has fallen in both regions:
  - Europe: from $512 million in 2017 (inflated by the ChemChina-Syngenta mega deal), to $130 million in 2018
  - North America: from $207 million in 2017, to just $44 million in 2018
- Overall investment into the two regions fell from $111 billion in 2017, to just $30 billion in 2018. Similarly low levels were last seen in 2013 and 2014.

Figure 1: Chinese FDI deal volumes and values
USD million, numbers of deals

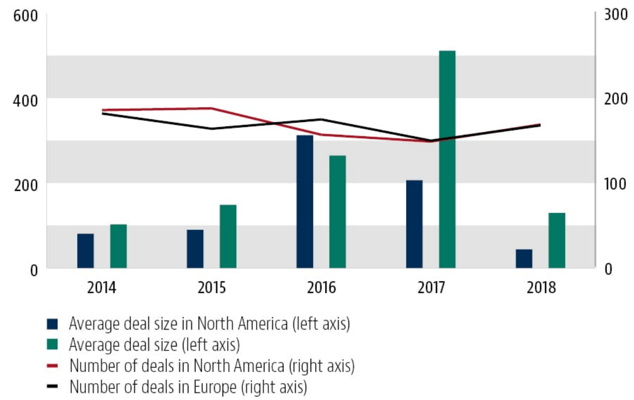
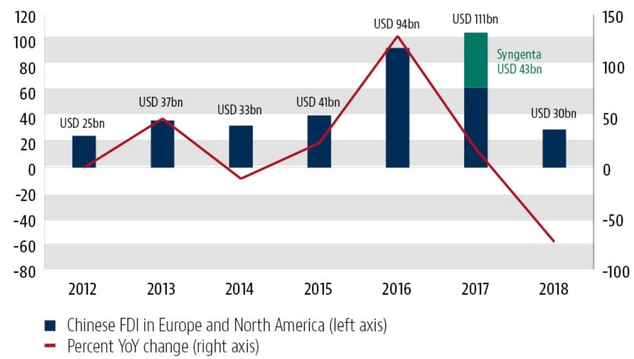


Figure 2: Value of completed Chinese FDI transactions in Europe and North America
USD billion, percentage YoY change



2. Europe proves the more resilient region

What is the trend?

Chinese FDI into Europe far outweighed investment in North America in 2018. Flows into the US took another sharp plunge, while Europe saw a more modest – but still significant – fall.

What is the context?

Investment into the US has been hit by a combination of:

- persistent tightening of Chinese regulatory scrutiny of outbound capital flows
- changing US policy on Chinese FDI (e.g., tighter foreign investment reviews)
- a deteriorating economic relationship between the two countries

Europe also saw a steep year-on-year drop in absolute terms, though the 2017 figures were inflated by ChemChina's USD 43 billion acquisition of Syngenta.

This disparity is partly because the types of deal likely to be approved by China are concentrated in sectors where Europe – and Germany in particular – has a major presence (e.g., advanced manufacturing).

Industries where the US is strong are more tightly monitored. For instance, high tech is subject to US inspection, while entertainment and real estate are coming under Chinese scrutiny.

What does the data say?

North America

- Chinese FDI into North America plummeted by 75% in 2018, to just $8 billion.
- The US experienced most of the downturn; investment plunged from $29 billion in 2017, to just $5 billion in 2018.
- In contrast, Canada saw an uptick in investment, from $1.5 billion in 2017 to $2.7 billion in 2018. This was the result of several major acquisitions in the basic materials sector.

Europe

- Europe saw $22.5 billion of Chinese investment in 2018.
- Taking out the 'Syngenta effect', this represents a 40% drop from the previous year.

Figure 3: Top Chinese FDI transactions in Europe and North America, 2018
USD billion

Europe			North America		
Investor	Target	Value	Investor	Target	Value
Zhejiang Geely Holding Group	Volvo Ab	3.5	Zijin Mining Group	Nevsun Resources	1.25
Strategic IDC	Global Switch	2.8	Shandong Weigao Group	Argon Medical Devices	0.85
Legend Holdings	Banque Internationale A Luxembourg Sa	1.8	Primavera Capital Group	Nobel Learning Communities	0.8
Kerui Tiancheng Investment	Biotest	1.3	CITIC	Ivanhoe Mines	0.6
Orient Securities	Imagina Media	1.1	CST Group, China Minsheng	Mining assets	0.4

3. Divestment accelerates as investment slows

What is the trend?

As well as restricting outbound investment, tightening financial conditions in China have driven some significant divestments among Chinese firms.

What is the context?

Some of China's most acquisitive investors of recent years have divested foreign assets at unprecedented rates in 2018. Sales mainly involved real estate, hospitality and entertainment assets.

What does the data say?

- In 2018, Chinese firms sold $13 billion of North American assets, and $5 billion of European holdings.
- Combined with slowing outbound investment, these sales pushed Chinese FDI in North America $5.5 billion into the negative during 2018.
- Chinese firms announced another $12 billion of divestments across Europe and North America last year – sales which are due for completion in 2019.

Figure 4: Major Chinese divestments in Europe and North America, 2018

Status	Chinese company	Target	Value (USD m)	Target country
North America				
Reported	Ingram Micro	HNA	7,500	USA
Completed	Hilton Worldwide Holdings	HNA	5,900	USA
Reported	Luxury hotel collection	Anbang Insurance	5,500	USA
Reported	Legendary Entertainment	Wanda	3,500	USA
Completed	245 Park Ave in New York	HNA	2,200	USA
Completed	Radisson	HNA	2,000	USA
Report	28 Liberty	Fosun	1,600	USA
Completed	Park Hotels & Resorts	HNA	1,380	USA
Completed	Hilton Grand	HNA	1,140	USA
Europe				
Reported	Swissport Group	HNA	2,730	Switzerland
Completed	Avolon	HNA	2,210	Ireland
Reported	TIP Trailer Services	HNA	1,200	Netherland
Completed	Gategroup Holding	HNA	1,100	Switzerland

4. Industry patterns reflect on-the-ground realities

What is the trend?

The sector make-up of Chinese FDI varied between Europe and North America in 2018, largely due to two influences. Firstly, differing political and regulatory landscapes in the two regions; and secondly, Chinese restrictions on certain outbound investments, which disproportionately affected flows into North America.

What is the context?

2017 saw a clutch of Chinese mega-deals in Europe, bringing about a concentration of deals in agriculture and food, and in transport and infrastructure. In 2018, there was no such concentration. No one industry accounted for more than 20% of Chinese investment into the region.

Investment in North America was more concentrated, driven in part by some sizable mining deals in Canada. In the US, the focus moved away from real estate and transport (due to Chinese policy restrictions) and into healthcare and biotechnology.

What does the data say?

Top sectors for Chinese FDI in 2018:

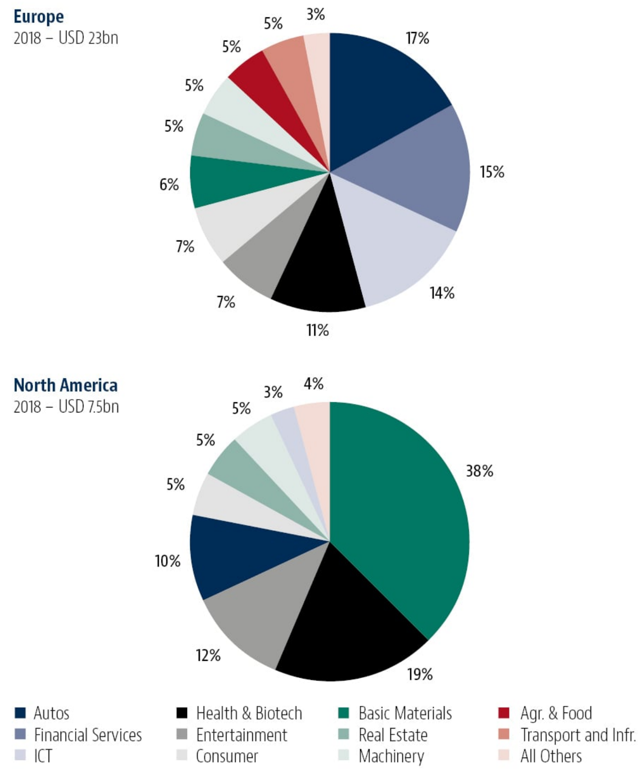
Europe

- Automotive – 17%
- Financial and business services – 15%
- ICT – 14%

North America

- Basic materials – 38%
- Healthcare and biotechnology – 19%
- Entertainment, media and education – 12%

Figure 5: Chinese FDI transactions by industry
Percentage of total



5. State enterprises eye North America; financial investors prefer Europe

What is the trend?

The share of state and private investment in each region converged during 2018. Meanwhile, financial investors shifted their attention towards Europe and away from North America.

What is the context?

The share of state-owned Chinese investment fell heavily in Europe, following the inflationary effect of two massive deals in 2017. But it rose sharply in North America, due partly to mining acquisitions in Canada, and partly to a big fall in private investment.

There was no such convergence when it comes to investment motives, however.

The share of financially driven investments rose sharply in Europe, despite Chinese regulation favoring strategic investments. But in North America, these rules are having the desired effect: financial investments declined here in 2018 for a third consecutive year.

What does the data say?

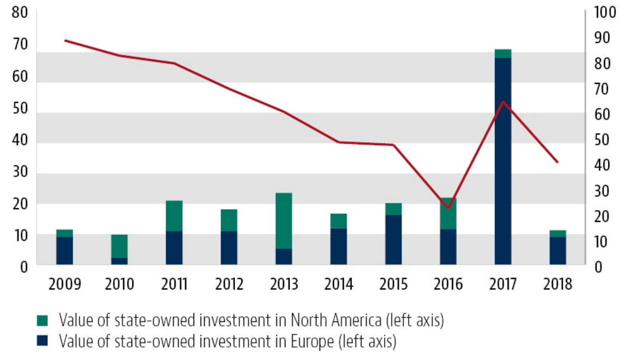
Proportion of Chinese FDI made by state-owned investors:

- Europe – 40% (down from 86% in 2017)
- North America – 38% (up from 9% in 2017)

Proportion of Chinese FDI represented by financial investments:

- Europe – 40% (up from 24% in 2017)
- North America – 5% (down from 20%)

Figure 6: FDI transactions by Chinese state-owned investors in Europe and North America USD billion, percentage of total



6. A clutch of European economies see investments surge

What is the trend?

A wide spread of countries across Europe saw relative increases in Chinese FDI during 2018, while in North America, investment proved more geographically concentrated.

What is the context?

Investment levels rose significantly in a number of Western European nations last year, including France, Sweden, Luxembourg, Denmark and Spain.

They also spiked dramatically (albeit from a low base) in several Central and Eastern European economies – notably Hungary, Croatia, Poland and Slovenia. Greenfield investments in manufacturing and renewable energy were a key driver here.

In North America, three administrative regions dominated last year: British Columbia, Pennsylvania and Texas. California – traditionally North America's biggest regional magnet for Chinese FDI – fell away dramatically.

What does the data say?

YoY changes in Chinese FDI by region 2017-18

Western Europe

- Luxembourg: >1,000%
- Denmark: >1,000%
- Sweden: 186%
- Spain: 162%

CEE

- Slovenia: >1,000%
- Croatia: 355%
- Hungary: 185%
- Poland: 182%

North America

- Pennsylvania: >1,000%
- British Columbia: 96%
- Texas: 337%
- California: -93%

Figure 7: Geographic breakdown of Chinese FDI in Europe and North America
USD billion

Country/State	Investment in 2018	% change 2017-2018	Country/State	Investment 2000-2018
Europe				
UK	4.9	-76%	UK	55
Sweden	4.0	186%	Switzerland	45
Germany	2.5	34%	Germany	27
Luxembourg	1.9	>1,000%	France	17
France	1.8	86%	Italy	17
Spain	1.2	162%	Netherlands	12
Denmark	1.1	>1,000%	Finland	8
North America				
British Columbia	2.2	96%	California	31
Pennsylvania	1.2	>1,000%	Alberta	27
Texas	0.9	337%	Illinois	10
California	0.4	-93%	Kentucky	9
Alberta	0.4	826%	British Columbia	7
Massachusetts	0.3	-86%	Michigan	4.5
Ohio	0.3	-17%	Massachusetts	3.7

Source

Figs 1, 2, 3, 5, 7: Rhodium Group. Data represents the value of direct investment transactions by Mainland Chinese companies, including greenfield projects and acquisitions that result in significant ownership control (>10% of equity). Europe includes the EU-28 and the European Free Trade Association (EFTA) countries: Iceland, Liechtenstein, Norway, and Switzerland. North America includes the United States and Canada.

Fig 4: Rhodium Group; includes major announced and completed sales of assets in Europe and North America by Mainland Chinese companies.

Fig 6: Rhodium Group. Data represents the value of direct investment transactions by Mainland Chinese companies, including greenfield projects and acquisitions that result in significant ownership control (>10% of equity). Europe includes the EU-28 and the European Free Trade Association (EFTA) countries: Iceland, Liechtenstein, Norway, and Switzerland. North America includes the United States and Canada. State-owned refers to companies that are at least 20% owned and controlled by state-related entities.

The state of US investment screening

How are new investment review rules affecting Chinese FDI into the US?

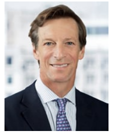
At a glance

- New US legislation (FIRRMA) is changing the FDI landscape.

- The new law provides the government with the authority to review minority investments into sensitive sectors.

- While the government's policy orientation remains unchanged, the full impact of the legislation will emerge once its implementation regime becomes clear.

- If implemented carefully and narrowly, the new regime could stabilize US-China investment relations for the future, while protecting US national interests.



Rod Hunter
Partner, Baker McKenzie

The backdrop

New US investment screening rules are making life more difficult for Chinese investors. Scrutiny of Chinese deals has increased in recent years, and the new regime will reach a broader range of investments once fully implemented next year.

The Foreign Investment Risk Review Modernization Act (FIRRMA) expands the scope of investment reviews carried out by the Committee on Foreign Investment in the United States (CFIUS). It also creates mandatory filing obligations for the first time. Brought in last year, its implementation began in November.

From before FIRRMA's introduction, heightened CFIUS scrutiny has contributed to a fall in Chinese FDI since the highs of 2016, and a shift away from technology investments.

Investment reviews began to ramp up towards the end of the Obama years. This was in response to a sharp increase in attempted semiconductor acquisitions, and other technology investments, by Chinese buyers.

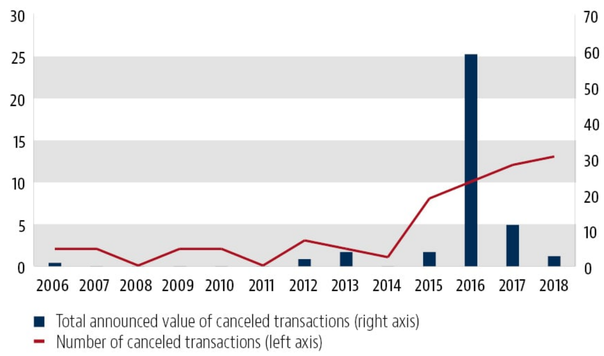
This has continued under the Trump administration – amplified in part by a complicated presidential transition, in which leadership and staffing gaps contributed to a backlog of investment reviews.

Since then, America's increasingly confrontational trade relationship with China has meant greater uncertainty for deals in high-tech industries, and in areas such as sensitive personal data. However, it should be noted that CFIUS's policy approach remains the same.

CFIUS attention was the main reason for the failure of at least 14 Chinese investments in 2018, most of them within the first six months (i.e., before the introduction of FIRRMA). There were fewer cancellations during the latter half of the year, as Chinese companies moved away from problematic industries and transactions.

It's fair to assume that the prospect of a CFIUS review has dissuaded other Chinese investors from bidding for US assets.

Figure 8: Canceled and withdrawn Chinese FDI transactions in United States, 2006-2018 Number of deals, USD billion



Source: Rhodium Group; includes major transactions by Mainland Chinese investors that were withdrawn or cancelled.

Early impact

FIRRMA brings foreign venture capital and other minority investments meeting certain criteria under CFIUS jurisdiction. It focuses on critical technologies and infrastructure, and companies maintaining sensitive data of US citizens.

A Pilot Program came into effect in November 2018, implementing FIRRMA's mandatory declarations (essential prior approvals) for investments in businesses developing critical technologies.

These new declarations are backed by penalties potentially running to the value of the investment itself – causing sellers and buyers to vet foreign investment deals closely.

The implementation question

Many of FIRRMA's most far-reaching changes will be implemented over a transition period between now and March 2020.

CFIUS will extend the regulatory regime to deals involving critical infrastructure and sensitive personal data.

Meanwhile, the administration is drawing up a list of 'emerging and foundational technologies' to be covered by declaration requirements, and subject to export control licensing when shared with China.

A broadly inclusive list of these technologies, covering whole fields such as artificial intelligence or biotechnology, would expose greater numbers of foreign investments to declarations. Conversely, a more targeted interpretation could make FIRRMA less encompassing.

Looking forward

FIRRMA has caused uncertainty for Chinese investors in the short term. But it has the potential to put US-China investment relations on a more solid footing for the future.

The legislation generally strikes a reasonable balance between fostering openness to foreign capital, and protecting American security interests. In fact, as the strategic rivalry intensifies between the two countries, a robust CFIUS regime could be essential to keeping the door open to Chinese investments in non-sensitive areas.

A limited – and transparent – implementation of FIRRMA could help dispel uncertainty over the course that the US's new investment regime will take. That would give Chinese firms the confidence to continue their deal-making in sectors that the US considers open for investment.

A changing European landscape

As European investment regulation evolves, what are the long-term implications for Chinese investors?

At a glance

- Europe remains open to foreign investments, including those from China.

- However, many countries are establishing or boosting their screening regimes.

- And the EU is fostering closer coordination of investment monitoring.

- Despite this, investment scrutiny remains less stringent than in the US.

- But Chinese investors will still need to plan their transactions carefully, to ensure successful outcomes in a changed regulatory context.

Thomas Gilles
Partner, Baker McKenzie

Anahita Thoms
Partner, Baker McKenzie

The backdrop

To date, regulatory intervention in foreign investments into Europe has been relatively rare.

Prior to 2018, there was not one case of a Chinese acquisition being directly blocked by a government for national security reasons.

This landscape is beginning to change, however.

Europe remains open to Chinese investments, but recent developments have brought them under greater government scrutiny across the continent.

National action

Countries are updating their investment review regimes and expanding their capacity to monitor transactions.

Last year, France extended its list of sectors that are subject to investment reviews. Germany lowered the investment threshold that triggers a government review in sensitive industries. Other nations, such as the UK, began the process of updating their review mechanisms.

Meanwhile, states like Hungary have been establishing investment review regimes for the first time. Non-EU investors must now seek government approval to acquire assets in Hungary considered important to national security.

Other nations – including the Netherlands and Denmark – are debating similar steps.

Governments across Europe are also stepping up their efforts through more assertive industrial policies and direct action. Major economies including France and Germany have announced their intention to expand industrial policy tools to protect sensitive technologies.

What's more, governments are increasingly willing to resort to alternative channels to prevent foreign takeovers. For instance, Germany bought a stake in 50Hertz through one of its policy banks last year, effectively preventing the utility company's sale to China's State Grid.

A pan-European framework

For its part, the EU has created a new framework to coordinate the screening of foreign investment for security risks.

This fosters information-sharing among member states on foreign investment, and facilitates the convergence of investment review mechanisms.

Introduced in November 2018, the rules require member states to report on foreign investments and allow them to request information on specific transactions from each other.

The framework doesn't give the EU the power to block investments. Instead, it sets out guidelines for national regimes on which industries and investments should be scrutinized.

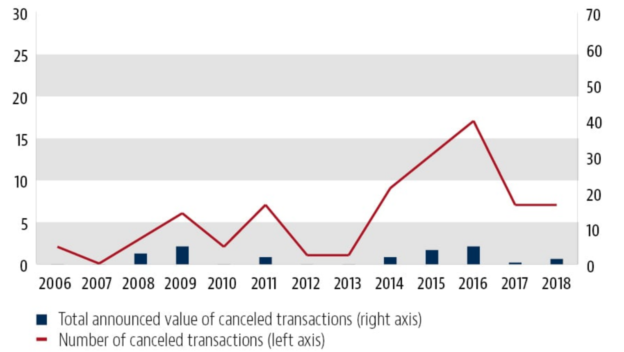
Among the sectors listed are artificial intelligence, robotics and semiconductors; target investments include those involving state ownership or industrial policy support.

The EU's framework doesn't amount to a particularly strong screening regime. But its introduction is likely to accelerate the trend toward more stringent mechanisms among individual countries.

Early impact

Europe's move towards greater FDI scrutiny may be in its infancy, but some effects are already being felt.

Figure 9: Canceled and withdrawn Chinese FDI transactions in Europe, 2006-2018
Number of deals, USD billion



Source: Rhodium Group; includes major transactions by Mainland Chinese investors that were withdrawn or cancelled. Europe includes the EU-28 and the European Free Trade Association (EFTA) countries: Iceland, Liechtenstein, Norway, and Switzerland.

At least seven Chinese transactions faltered due to regulatory intervention last year. One notable example was Yantai Taihai's proposed acquisition of Leifeld Metal Spinning in Germany.

Other transactions were delayed due to regulatory actions – such as China Three Gorges' purchase of EDP, a Portuguese utilities firm.

Looking forward

In this context, investors will require rigorous planning to navigate a more challenging regulatory environment.

But it should be stressed that Europe is not embracing a restrictive investment policy.

Recent reforms are simply catch-up measures, reflecting common practice elsewhere. And for the most part, the mechanisms introduced have a narrow focus on national security protection. They're not concerned with broader tests like net economic benefit, and they don't scrutinize ownership stakes below 10%.

As such, European screening remains less expansive than in the US. And individual governments retain the authority to design their own investment review regimes. As they do so, many will favor liberal approaches to monitoring FDI from China and elsewhere.

Baker McKenzie.

The outlook for 2019

What might a tightening regulatory environment mean for Chinese outbound investment

At a glance

- Healthy demand for European deals is in stark contrast with the pipeline in North America.

- Yet investments in both regions face tightening review regimes.

- Meanwhile, slowing economic growth and high debt levels in China raise further doubts over the appetite for outbound investment.

- However, with Chinese FDI under-represented globally, there is a lot of growth potential in the long run if the policy environment at home and abroad normalizes again.

Contrasting prospects

A look at the deals pipeline for 2019 suggests a very different picture for Chinese FDI between Europe and North America.

Europe currently has more than $20 billion in pending transactions, signaling a robust appetite for investment in the region among Chinese organizations.

But at just $5 billion, the North American pipeline is considerably weaker – that's half the value that was on offer this time last year. And around half of it is down to a single deal: Oceanwide's long-awaited $2.7 billion acquisition of insurer Genworth.

Greenfield investment looks like the brightest hope for Chinese FDI into North America in 2019. This follows an uptick in such projects during the second half of 2018, as increasing trade barriers made direct investments more beneficial than paying export tariffs.

Regulatory headwinds

When it comes to regulation, the regional outlook is more consistent. The legislative climate in both the US and Europe features significant risk and uncertainty for Chinese investors.

The US's new investment screening legislation, FIRRMA, has created an unpredictable context for foreign investment. At the same time, hardening economic and political relations between the US and China are weighing on investor sentiment.

And while remaining open to Chinese investment, European countries (and the EU) are overhauling their investment screening approaches.

Chinese investors could be particularly affected by these changes, which allow governments to scrutinize investments that are connected to government funding or policy.

An uncertain outlook

Greater Chinese controls of capital outflows were the primary driver of the global drop in Chinese FDI last year. Looking forward, the uncertain domestic economic outlook suggests that such controls aren't likely to be relaxed – casting a further shadow over outbound investment.

The Chinese government will probably take steps to ease the money supply and stimulate the economy. A law passed in March 2019 aims to ease foreign businesses' concerns and keep inbound investment flowing into China.

However, there are growing interest rate differentials between China on the one hand, and the advanced economies of North America and Europe on the other. These will require the government to maintain strict administrative controls on outbound capital.

However, the long-term outlook for Chinese outbound investment remains positive if the policy uncertainty at home and abroad dissipates. To date, China has underinvested in the world for an economy of its size and importance. The country's outbound FDI stock totals just 15% of GDP, compared to an average of about 33% across other major economies.

Putting aside concerns over state-driven technology transfers, there are many legitimate reasons for Chinese outbound investment: proximity to customers, market know-how, access to resources, and so on.

Despite the prevailing regulatory and market cross-currents, we can expect FDI to return to higher levels once domestic and international policies settle in.

Baker McKenzie.

Transaction risks in the new regulatory reality

What should Chinese investors expect of the new review frameworks in Europe and the US?

- The regulatory climate for FDI in Europe and the US is becoming more challenging.

- In this changing context, Chinese investors will need to get to grips with:
1. Closer scrutiny by host/target governments
2. Longer review timelines
3. More intense disclosure demands
4. An expanded sector reach
5. Added scrutiny of state-backed players
6. Lower stake thresholds

- Given these developments, careful preparation and risk mitigation will be critical for Chinese buyers.

- With such measures in place, deals can still be brought to successful conclusions.

Howard Wu
Partner, Baker McKenzie

Tracy Wut
Partner, Baker McKenzie

Bee Chun Boo
Partner, Baker McKenzie

The backdrop

Since 2016, Chinese outbound investors have been coming to terms with growing regulatory complexity.

Domestically, this has taken the form of increased scrutiny over outward capital flows, and the changing availability of financing channels for overseas transactions.

And over the past year, the effect has been exacerbated by more stringent examination of FDI in the West – particularly where there are potential security implications.

What to expect

Here's a summary of the changes that Chinese buyers and foreign sellers are likely to face in this new regulatory reality:

1. Closer scrutiny of acquisitions
Regulators in Europe and North America are increasingly likely to look at transactions involving foreign buyers.

This is the result of new investment review legislation in the US; stronger screening regimes in Europe; and a new EU monitoring framework.

As a result, FDI into both regions will be more prone to regulatory attention –especially when it targets sectors or technologies with national security implications.

2. Extended review timelines
As nations adapt their investment review regimes, the timelines are inevitably getting longer.

For example, reforms in the UK – yet to be enacted – include a new formal review period of up to 75 days. Similarly, in the US, the formal CFIUS filing process has been extended from 75 to 105 days' maximum.

On the plus side for US transitions, an accelerated 30-day declaration process has also been introduced for deals without national security implications. This offers a quicker and easier way to seek CFIUS clearance.

3. Heightened disclosure demands
Governments on both sides of the Atlantic are seeking greater information disclosure. Potential foreign buyers will be expected to provide details about their:

- shareholder structure and financing sources
- investment target – including its key technologies and customer base
- integration strategy for the asset once acquired

Failure to provide complete and accurate information could risk significant regulatory penalties. Effective internal controls and compliance capabilities will therefore be vital to success.

4. A growing sector reach
In both Europe and the US, regulators are broadening their sector focus beyond traditional security-related industries, such as aerospace and semiconductors.

They are increasingly turning their attention to:

- critical emerging technologies with strategic applications
- sensitive personal data and data privacy
- critical infrastructure – including utilities, logistics, telecommunications and other networks

Governments in both regions are currently grappling with how best to define these sectors. So for the moment, there is some uncertainty over which transactions will come under scrutiny. But any transaction that touches on any of these areas is at risk of being put to review.

5. A harsher spotlight on state support
The EU's review framework encourages countries to examine transactions by state-controlled investors – not just those owned by their national government, but also organizations with significant state funding.

Similarly, in the US, CFIUS can now request mandatory declarations from buyers in which a foreign government has a substantial financial interest.

On both sides of the Atlantic, we can therefore expect investors with government shareholders or support to face special scrutiny.

6. Smaller stakes coming under review

Reforms in Europe and the US have lowered the investment stake threshold for regulatory oversight.

For example, Germany recently reduced its threshold for reviewing non-EU investments in defense, technology or media firms from 25% to 10%.

In the US, stakes of less than 10% have been made subject to review under certain conditions. This means that private equity and other financial investors may now require CFIUS clearance.

Be prepared

In this changing context, a thorough understanding of national interests and public opinion will be essential for would-be investors.

Gaining that overview can be particularly difficult in Europe, where transactions may attract the interest of multiple states at the same time. And for its part, the American investment environment is no less complex given the emerging nature of the US regime.

An awareness of the internal dynamics at play could help investors to avoid costly mistakes.

Transparent behavior and effective public relations will also be vital. Investors will need to highlight the benefits of their planned transaction, and assuage potential security concerns in host countries.

Despite a more challenging climate, deals can still get done if buyers and sellers prepare properly, and act carefully to mitigate risks. For prospective Chinese investors, this preparation will be crucial to credibility, and to their ability to win competitive bids.

Leading and closing three deals a day

Transactional Powerhouse

We provide commercially-focused, end to end legal advice to maximize deal certainty and secure the intended value of transactions. Our 2,500 lawyers combine money market sophistication with local market excellence. We lead on major transactions with expertise spanning banking and finance, capital markets, corporate finance, funds, M&A, private equity and projects. The combination of deep sector expertise, and our ability to work seamlessly across each of the countries where we operate, means we add unique value in shaping, negotiating and closing the deal.