

Corporate Double Exposure: Taiwan's 2025 Reform of Outbound Investment Control and the Fragmented Legal Order

Introduction

In recent years, outbound investment review mechanisms have drawn increasing attention amid a surge of cross-border deals. These frameworks remain limited and underdeveloped,¹ but are reflected in a range of regulatory responses from soft monitoring mechanisms to discretionary approval regimes.² Common review criteria encompass financial thresholds, investment destinations, sectoral relevance, and technology sensitivity. Meanwhile, government-led actions blending domestic industrial policies into foreign relations have been taking shape in many corners of the world.³ Against such a backdrop, it remains unclear how the review criteria interact with general principles governing the market, posing significant challenges for investors navigating outbound investment mechanisms.

In 2025, the Republic of China (Taiwan) amended its Statute for Industrial Innovation (the Statute) with a risk-oriented approval system that integrates national security and socioeconomic considerations. By situating these changes alongside recent EU initiatives, this *Insight* examines the practical implications for corporate decision-making on a broader statutory spectrum. It flags how such a trend exposes corporations to a dual layer of risk: one domestic, stemming from discretionary review and penalties, and one international, rooted in regulatory fragmentation and evolving legal obligations across jurisdictions.

Comparative Framework: Taiwan and the EU

In 2025, both Taiwan and the EU have shown increased interest in the strategic regulation of outbound capital flows. One notable example is Taiwan Semiconductor Manufacturing Company (TSMC), the world's largest chip producer, announcing plans to invest over 100 billion USD in U.S. manufacturing.⁴ As Taiwan establishes a formal approval mechanism tied with social-economic factors, it must aim to balance between the control of capital and maintaining comparative advantage in a global market. We look at how such a mechanism might be implemented, highlighting parallels with the white papers and policy proposals published in the EU.

Taiwan

Taiwan's approach to outbound investment screening is not entirely new. In fact, Taiwan's institutional practice has historically combined national security concerns with industrial and investment governance.⁵ A precedent can be found in Article 3 of the Ministry of Economic Affairs (MOEA) Guidelines for Reviewing and Supervising Investments in Semiconductor and LCD Panel Industries in Mainland China (hereinafter the Guidelines) (released only in Mandarin).⁶ These Guidelines, issued in 2002, require that specific outbound investments relating to strategic technologies be subject to review by a Key Technology Task Force, which may include the national security agencies.

Besides formalizing the process, the 2025 statutory change stipulates that the MOEA promulgate implementation rules, in consultation with relevant authorities, that take into account the investment destination, industry or technology specificity, and transaction thresholds.⁷

Furthermore, according to legislative documents concerning the 2025 amendment (released only in Mandarin), the amendment was introduced “to prevent the outflow of critical technologies that could undermine industrial competitiveness.”⁸ Under the revised framework, the MOEA can now reject investment applications, either fully or conditionally, if the investments are deemed contrary to Taiwan's national interests, have a negative impact on national economic development, affect the government's compliance with international treaties or agreements to which it is a party, or if the applicant has violated

labor-related regulations and has caused major labor disputes that have not yet been resolved. An example given in the legislative document states expressly that the application may be denied if there are malicious factory closures and capital transfers that negatively affect labor rights.

The 2025 amendment reinforces these provisions by creating enforceable penalties for non-compliance. Although national security has consistently been a consideration in the outbound investment screening framework of Taiwan, the system has morphed from a mere capital outflow monitoring mechanism into a risk-oriented approval framework. The revised mechanism has taken into account the changing social-economic structure, development of technologies, and industrial competitiveness.

EU

The EU began reassessing its approach to outbound investment following consultations with member states in 2023. In January 2024, a white paper identifying a regulatory gap in the oversight of outbound investments was published citing risks such as the misuse of EU-origin technology and know-how.⁹

Building on this and following public consultation confirming the need to address such risks, on January 15, 2025, the European Commission issued a Recommendation highlighting the lack of systematic data collection on outbound investments. It encourages member states to gather data in sectors like semiconductors, artificial intelligence, and quantum technologies.¹⁰ In contrast to Taiwan's binding regulatory approach, the Recommendation is non-binding, but it goes further in certain respects. It calls for reviews to cover not only direct investments but also those made through third-country entities, existing subsidiaries, or joint ventures. This includes gradual transfers of assets over time as well as investments intended to circumvent existing security-related trade and investment controls.¹¹ While the Recommendation does not mandate a new screening mechanism, it urges member states to establish a cooperative framework for the voluntary sharing of transaction data and suggests leveraging existing systems, particularly export control regimes, to meet its objectives.¹² Notably, as cooperation on outbound investment screening and export controls was explicitly addressed in the EU-

US trade agreement concluded on July 27, 2025,¹³ this approach has resembled the US Outbound Investment Security Program operated by the US Treasury Department.¹⁴

Comparative Assessment

Taiwan's regulatory evolution taken together with the developments in the EU reveals two paradigms in the control of investment framework – each reflecting the convergence of industrial policies with the international economic order. Taiwan's framework represents a risk-based approval system, where national interest assessments are embedded ex ante in the investment approval process. This system emphasizes control at the point of capital exit, allowing authorities to intervene before investment funds exit the jurisdiction. Concurrently, discussions in the EU seem eager to bring oversight to capital flows once they are outside of the jurisdiction. While these features may be novel, the push to advance national interests through comparative advantage raises the question of whether the voice of the private sector is being diminished in this emerging global regulatory race.

Implications: Double Exposure for Corporations

Taiwan's case illustrates a transition from threshold-based monitoring mechanism to a risk-oriented framework that explicitly incorporates national security and socioeconomic considerations. For private firms, this creates dual obstacles: discretionary state review at the domestic level and the uncertainty of overlapping or even conflicting international obligations. TSMC, for instance, is required to acquire investment approval before transferring its capital. Additionally, it must navigate the complex and incomprehensible web of investment management abroad, such as data disclosure under the EU approach. Moving forward, the concerns can be categorized into three dimensions regarding the control of outbound investments.

First, in contrast to the EU's recent growing debate on outbound investment control via a data-sharing platform, Taiwan has a binding enforcement framework. This contrast shows how Taiwan's revised framework may ultimately serve as a testing ground for the practice of a discretionary approval mechanism. For corporations navigating the Taiwan framework, understanding how investments may intersect with national and international objectives is now as critical as complying with the letter of the law.

This brings us to the second layer of concern. The legal design of Taiwan's framework suggests that corporations, principally those in strategic sectors such as semiconductors and infrastructures, may increasingly be treated as instruments through which national objectives are pursued. This implies that private decision-making could be shaped by broader geopolitical and socioeconomic considerations, effectively positioning corporations as de facto proxies for state strategy. Scholars like Choer Moraes and Wigell have described this as part of a rise in corporate geoeconomics: where corporations are no longer neutral market participants and become actors, sometimes even proxies, in states' strategic games. Accordingly, firms navigating outbound investment must contend not only with formal legal regimes but also with shifting geopolitical imperatives steering regulatory outcomes.

As a final remark, we may be witnessing a transformation in the global economic order, defined by ever more complex mechanisms of investment governance. This rings as true to private sector actors as it does to the regulators. The former must weigh broader socioeconomic considerations once their investment plans are taken across borders. The latter must evaluate and adapt domestic rules in light of evolving international obligations and emerging risks. Whether regulating technologies, capital flows, or intangible assets, it may be high time to rethink if and how domestic economic policy, as woven together with international law, is contributing to a broader international economic order. Given the close relationships between cross-border investment and the role domestic law plays in the international economic order, a careful consideration of various approaches to investment governance is necessary. As such, whether it's the private firm's experience in mapping the scrutiny process, or the regulator's approach to charting risks, market players seeking to reconcile domestic policies with the new international economic law order should draw lessons from Taiwan.¹⁵

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¹ Victor Crochet and Weihuan Zhou, *The Rise of Outbound Investment Screening: A Vacuum in International Economic Law*, EJIL: TALK! (Dec. 27, 2024), <https://www.ejiltalk.org/the-rise-of-outbound-investment-screening-a-vacuum-in-international-economic-law/>.

² *Id.*

³ Georgios Dimitropoulos, *Industrial Policy and the New Internationalism: After the Liberal International Order*, 57 CORNELL INT'L L.J. 295, 374 (Spring 2025).

⁴ Taiwan Semiconductor Manufacturing Company Ltd., *TSMC Intends to Expand Its Investment in the United States to US\$165 Billion to Power the Future of AI* (Mar. 4, 2025), <https://pr.tsmc.com/english/news/3210>.

⁵ Crochet and Zhou, *supra* note 1.

⁶ Republic of China, *Guidelines for Reviewing and Supervising Investments in Semiconductor and LCD Panel Industries in Mainland China*, art. 3, <https://law.moea.gov.tw/LawContent.aspx?id=FL021027>.

⁷ Republic of China, *Industrial Innovation Act*, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0040051>.

⁸ Taiwan Legislative Yuan, *Statute for Industrial Innovation*, Legislative History of the Legislative Yuan's Legal System, <https://lis.ly.gov.tw/lglawc/lglawkm>.

⁹ European Commission, *White Paper on Outbound Investments*, COM (2024) 24 final (Jan. 24, 2024), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024DC0024>.

¹⁰ Press Release, European Commission, *Recommendation on Outbound Investments* (Jan. 15, 2025), https://ec.europa.eu/commission/presscorner/detail/en/ip_25_261.

¹¹ European Commission, *Commission Recommendation (EU) 2025/63 of 15 January 2025 on Reviewing Outbound Investments in Technology Areas Critical for the Economic Security of the Union* (Jan. 15, 2025), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202500063.

¹² *Id.*

¹³ European Commission, *EU-US trade deal explained* (Jul. 29, 2025), https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_1930.

¹⁴ U.S. Department of the Treasury, *Outbound Investment Security Program*, <https://home.treasury.gov/policy-issues/international/outbound-investment-program>.

¹⁵ Dimitropoulos, *supra* note 3.