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Editor's Note
Taking Notes

Victoria Prussen Spears*

Artificial intelligence notetakers may be able to improve our productivity. But as the authors of the lead article in this issue of *The Global Regulatory Developments Journal* point out, they also may bring with them legal risks. Other articles here explore a host of regulatory developments from countries around the world, as you will see.

AI Notetakers

Rajesh De, Amber C. Thomson, Ana Hadnes Bruder, Gabriela Kennedy, Oliver Yaros, Lei Shen, Justin Herring, David J. Lizmi, Ruth Zadikany, Marcus A. Christian, Rebecca Keay, Katie Steval, and Joanna K.C. Wong, attorneys with Mayer Brown, are the authors of our first article, titled "AI Notetakers: Productivity Tool or Emerging Legal Risk?"

In this article, the authors explore why AI notetakers warrant attention now and examine the regulatory entry points that global organizations encounter across the United States, Europe, China, and Brazil, offering practical guidance for governance frameworks that scale across borders.

PFAs

Then, in the article titled "Life in the PFAS Lane: Recent Global Trends in PFAS Regulation," Lincoln Tsang and Julie Kvedar, attorneys with Ropes & Gray LLP, discuss the status of the regulation of per- and polyfluoroalkyl substances across the European Union, the United Kingdom, and the United States.

Mergers

In the article titled "Draft EU Merger Guidelines: Formalising a Decade of Enforcement Practice," Ciara Barbu-O'Connor, David

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Cardwell, Louis Delvaux, Catriona Hatton, and Mounir Younes, attorneys with Baker Botts L.L.P., examine the public consultation launched recently by the European Commission on its draft revised Merger Guidelines.

Consumer Class Actions

Jeremy Andrews, Patrick H. Reilly, James Wagner, and Emily J A Evans, attorneys with Faegre Drinker Biddle & Reath LLP, next discuss the trend in the United Kingdom toward bringing its consumer protection rules more into line with those of the European Union. The title of their article: "UK Government Signals Expansion of Consumer Class Action Regime."

The UAE

In the article that follows, titled "United Arab Emirates: Countdown to Dubai Financial Services Authority's Updated Conduct Requirements," Philip Clarke and Tayler Sani, attorneys with Baker McKenzie, discuss the Dubai Financial Services Authority's finalized amendments to its framework for regulated roles (i.e., Licensed Functions), and the individuals performing them (i.e., Authorised Individuals).

Copyright Law

The article titled "New Saudi Copyright Law: Legislating for the Future" is by Jamie Ryder and Alex Mackay, attorneys with Reed Smith LLP.

In this article, the authors explore the key changes introduced by the Kingdom of Saudia Arabia's new and modernised copyright law.

From Germany

In the article titled "German Court Declares an ICC Award Enforceable Against a Foreign State, Rejecting Sovereign Immunity in a Commercial Arms-Supply Dispute," Finn Zeidler, Annekathrin Schmoll, Marc Kanzler, and Simon J. Ruhland, attorneys with

Gibson, Dunn & Crutcher LLP, review a German court decision that held that a foreign State may not invoke sovereign immunity to resist the recognition and enforcement of an arbitral award arising from a commercial arms-supply contract, and that a State that participates in the arbitration—all the more so where it brings a counterclaim—is precluded from later challenging the arbitration agreement before the German courts.

Japan

Then, in the article titled "Japan Blocks Foreign Acquisition on National Security Grounds, Signaling Increased Scrutiny," Dale M. Araki, Eric W. Sedlak, Jeffrey P. Richter, Andrea Ng, and Daisuke Morinaga, attorneys with K&L Gates LLP, discuss the decision by Japan to block the acquisition of Makino Milling Machine Co., Ltd., by a South Korea–based private equity firm.

Enjoy the issue!

Note

* Victoria Prussen Spears, Editor of *The Global Regulatory Developments Journal*, is Senior Vice President of Meyerowitz Communications Inc. A graduate of Sarah Lawrence College and Brooklyn Law School, Ms. Spears was an attorney at a leading New York City law firm before joining Meyerowitz Communications. Ms. Spears, who also is Editor of *The Journal of Robotics, Artificial Intelligence & Law*, *The Journal of Federal Agency Action*, and *The Global Trade Law Journal*, can be reached at vpspears@meyerowitzcommunications.com.

AI Notetakers: Productivity Tool or Emerging Legal Risk?

Rajesh De, Amber C. Thomson, Ana Hadnes Bruder, Gabriela Kennedy, Oliver Yaros, Lei Shen, Justin Herring, David J. Lizmi, Ruth Zadikany, Marcus A. Christian, Rebecca Keay, Katie Steval, and Joanna K.C. Wong*

In this article, the authors explore why AI notetakers warrant attention now and examine the regulatory entry points that global organizations encounter across the United States, Europe, China, and Brazil, offering practical guidance for governance frameworks that scale across borders.

At some point, you have almost certainly encountered an artificial intelligence (AI) notetaker in a virtual meeting. These tools function as automated participants, joining calls to record, transcribe, and summarize discussions, often generating written notes or action items shortly after the meeting ends. Sometimes they join discreetly; other times they announce their presence with a brief notification. In a growing number of cases, participants only realize they were present when an automated summary arrives in their inbox minutes later. What once felt novel has quickly become routine.

AI-powered notetakers are now embedded in the daily mechanics of how organizations communicate, document decisions, and manage workflows. Their appeal is obvious: they streamline documentation, enhance accountability, and reduce administrative burden. Yet their normalization has largely outpaced legal and compliance scrutiny. As these tools quietly record, process, and retain conversations across borders, they activate regulatory frameworks that many organizations have not yet fully mapped, with implications extending well beyond the technology teams responsible for deployment.

For global organizations, the challenge is to govern AI notetakers in a way that captures their productivity benefits without losing sight of legal obligations and the expectations of employees, clients, and business partners across different jurisdictions. The risk often does not stem solely from exceptional misuse, but from everyday

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deployment in meetings where consent, transparency, and accountability are handled informally or inconsistently.

This article explores why AI notetakers warrant attention now and examines the regulatory entry points that global organizations encounter across the United States, Europe, China, and Brazil, offering practical guidance for governance frameworks that scale across borders.

Why AI Notetakers Matter Now

AI Notetakers Have Become Routine in Internal and External Meetings

AI notetakers have become a common presence in virtual meetings across industries and regions. Their use is no longer confined to technology-forward sectors. Financial services, healthcare, legal, manufacturing, and professional services firms now encounter these tools regularly, whether because they have adopted them internally or because clients, vendors, or other counterparties bring them to the table.

In practice, these tools frequently enter meetings without all participants fully understanding their legal or commercial implications. Recording and automated summarization functions may be activated informally, including by external participants over whom the organization has no control. The pace of adoption has outstripped internal policy development in many organizations, resulting in uneven deployment and inconsistent approaches to consent, notice, retention, and data management. Geographic distribution adds further complexity: a single meeting may include participants subject to materially different rules regarding recording, data processing, and consent, multiplying potential legal risk with each cross-border interaction.

Each recorded meeting generates a data trail that may include personal information, business-sensitive discussions, and, depending on the participants, material implicating legal privilege, trade secrets, or other compliance-sensitive topics. In addition, the data trail may unintentionally create a discoverable meeting transcript for a sensitive meeting that was intended to be entirely oral. Without proactive governance, organizations risk losing visibility and control over how meeting data is created, retained, shared, and accessed across their information environment.

From Momentary Conversations to Permanent Data Assets

AI notetakers fundamentally change the nature of meetings. They transform conversations that would otherwise fade from memory into searchable, reusable records capable of circulating well beyond their original context.

This shift alters the risk profile of routine interactions. Transcripts and summaries are often stored centrally, indexed for retrieval, and integrated into broader enterprise systems such as customer relationship management tools, knowledge bases, or internal collaboration platforms. Over time, these records may be accessed by individuals who were not present at the original meeting, or who should not have access, and used for purposes extending beyond contemporaneous documentation.

The persistence of meeting data also raises significant questions regarding secondary use. AI-generated summaries may be relied on to support performance evaluations, contractual negotiations, internal investigations, or strategic decision-making, even though they are generated through probabilistic models that may omit nuance or mischaracterize context. As these outputs increasingly shape organizational knowledge, inaccuracies or bias introduced at the recording stage can propagate across systems and decisions.

These dynamics shift the compliance question from whether meetings are recorded to how recording is governed over time. Decisions made at the point of capture around participant awareness, scope of use, and retention thresholds determine whether AI notetaker outputs remain aligned with their original purpose or drift into secondary uses that were never contemplated.

Table 1. Common AI Notetaker Risks and Governance Response

Risk Category	Compliance Concern
Consent gaps	Recording without participant knowledge or meaningful agreement
Data overcollection	Capturing more data than necessary for the stated purpose
Cross-border exposure	Participants subject to stricter or conflicting local requirements
Vendor data use	Recordings reused for model training or accessed by third parties

Risk Category	Compliance Concern
Privilege and confidentiality	Sensitive discussions recorded without appropriate safeguards
Shadow information technology (IT)	Unapproved tools used outside IT and compliance visibility

Regulatory and Compliance Triggers by Jurisdiction

The operational dynamics described above place AI notetakers squarely within the scope of existing legal and regulatory frameworks. Across jurisdictions, many laws governing data protection, communications, and workplace practices already regulate how organizations may record, process, retain, and reuse information generated in business interactions.

While the structure and enforcement of these regimes vary, they give rise to a consistent set of compliance triggers that organizations must address when deploying AI notetakers. These include obligations around participant notice and awareness (and, where applicable, consent), the identification of a lawful basis for recording and downstream use, limits on retention and secondary processing, and the ability to demonstrate accountability through documented governance measures.

Rather than treating AI notetaker compliance as a series of isolated jurisdictional exercises, global organizations are better served by understanding how these compliance triggers operate across different regulatory environments. A principles-based approach provides a common foundation, while local legal requirements shape how those principles are implemented in practice.

Cross-Cutting Compliance Principles

Before examining jurisdiction-specific requirements, it is important to recognize that certain compliance principles recur across virtually all regulatory frameworks. Table 2 summarizes these cross-cutting principles, which provide a foundation for the jurisdiction-specific analysis that follows.

Table 2. Key Cross-Cutting Principles and Practical Implications	
Cross-Cutting Principle	**What to Watch for in Practice**
Participant Notice and Transparency	Disclose AI notetaker presence, purposes, retention periods, and participant rights before recording begins
Lawful Basis and Consent	Identify and document legal basis for recording and processing; requirements range from one-party to all-party consent standards
Purpose Limitation and Data Minimization	Limit recordings to what is necessary; do not repurpose without reassessing legal basis; indefinite retention is difficult to justify
Vendor Accountability	Assess provider data practices, model training use, third-party access, and international transfers; secure contractual safeguards
Sensitive Data and Biometrics	Voice recordings may implicate biometric or sensitive data rules where the tool creates or uses voiceprints, speaker-identification templates, or other characteristics capable of identifying an individual; heightened consent and notice obligations typically apply
Cross-Border Data Transfers	Data frequently stored outside participants' jurisdiction; transfer mechanisms (adequacy, Standard Contractual Clauses, regulatory approval) are required

The sections that follow focus on jurisdiction-specific requirements that supplement or modify these baseline principles, highlighting what is distinctive about each regulatory environment rather than restating common ground.

United States

The regulatory framework applicable to AI notetakers in the United States draws primarily on federal and state wiretapping and communications privacy statutes, supplemented by an expanding body of state-level data protection laws. The federal Wiretap Act, Title I of the Electronic Communications Privacy Act of 1986, establishes the foundational framework for recording communications in the United States by applying a "one-party consent"

standard that generally permits recording where at least one party to the communication is aware of and consents to the recording, provided the recording is not made for the purpose of committing a criminal or tortious act.[1]

At the state level, AI notetaker compliance becomes more complex. A number of states impose stricter "all-party consent" standards requiring every participant in a private conversation to be notified and to consent before recording begins; these include California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania, and Washington.[2] Among these, the California Invasion of Privacy Act (CIPA) warrants particular attention, both because of the volume of demand letters and civil litigation it has generated and because its reach extends beyond simple recording consent. CIPA separately prohibits unauthorized third parties from "reading, attempting to read, or learning the contents" of communications without consent and from using or attempting to use information obtained in that manner.[3] This may create potential liability for AI notetaker vendors whose operations may involve the interception of or access to recorded data, a theory that remains subject to ongoing litigation but has already produced a significant body of litigation that organizations and their vendors should monitor. Similarly, a number of states impose separate employee electronic monitoring notification requirements. Connecticut,[4] Delaware,[5] and New York,[6] among others, require employers to provide advance written notice before engaging in electronic monitoring of employees.

This area has been a prime target for plaintiff's attorneys because use of an AI transcription service inherently requires recording a meeting. Organizations should ensure that all participants are informed of and consent to the recording and transcription before using an AI notetaker (especially if the recordings will be used for AI training purposes). For example, Otter.ai was sued for "deceptively and surreptitiously" recording private conversations without participant permission, and for failing to disclose that the data would be used to train its transcription service.[7]

Beyond wiretapping statutes, certain state privacy laws impose additional consent and notice requirements for collecting sensitive personal information, which may include data captured by AI notetakers during meeting discussions. For example, Illinois' Biometric Information Privacy Act (BIPA) requires written consent before collecting, storing, or using individuals' biometric data,

including voiceprints that AI notetakers may generate to identify speakers. The California Consumer Privacy Act (CCPA) requires notice before collecting personal information, including biometric data. Depending on how the AI notetaker's transcription service operates, it may analyze accent or sentiment or other characteristics of the speaker's speech while transcribing the meeting. If this occurs, there may be biometric data–related privacy concerns, as some biometric data–related lawsuits have argued that such analysis constitutes the generation of biometric data and therefore requires notice and express consent.

Relatedly, the meeting transcript may include errors or misquote meeting participants. This risk can be heightened for individuals with accents or speech patterns the AI notetaker is less familiar with, raising potential bias concerns and legal exposure. If inaccurate or systematically less accurate transcripts are relied upon in employment decisions, investigations, performance management, or disciplinary processes, for example, potential allegations of discrimination or disparate impact under Title VII of the Civil Rights Act of 1964 or analogous state anti-discrimination laws may arise. Likewise, if the AI notetaker systematically produces lower-quality transcripts for speakers of certain ethnicities or linguistic backgrounds, the resulting records could reflect a pattern of bias that may be cited as evidence in discrimination litigation or regulatory investigations. In the event of civil litigation that requires the production of an AI notetaker's output that is incorrect or contains misquotes, such output can increase litigation risk and create difficulties in discovery.

AI notetaker use in workplace investigations warrants particular caution. Recording complaint intake interviews, witness statements, or other investigative meetings may chill candor and discourage participation, undermining the employer's ability to conduct the prompt and effective investigations that are central in addressing workplace issues. Similarly, recordings of meetings involving reasonable accommodation requests or interactive process discussions under the Americans with Disabilities Act (ADA) may capture protected medical information that employers are required to maintain as confidential and in separate files, and centralized storage of such recordings in searchable AI notetaker systems may be difficult to reconcile with that obligation.

In addition, recording performance management, disciplinary, or termination meetings creates a verbatim record that may be

discoverable in subsequent wrongful termination or discrimination litigation. If a supervisor or another employee makes an offhand, poorly phrased comment or joke during a meeting, it is preserved in writing and discoverable—often without the benefit of hearing the tone of voice and other atmospheric factors.

In addition, inconsistent recording practices, where some meetings are recorded and others are not, can create strategic evidentiary issues if, for example, conversations that are positive or helpful for the employer are not recorded while others are. Separately, organizations should be aware that AI notetaker use in meetings where employees discuss wages, working conditions, or engage in organizing activity may raise concerns under the National Labor Relations Act (NLRA) regarding employer surveillance and the protection of employees' Section 7 rights.

Another risk is disclosure of transcripts, especially those containing sensitive or confidential data, whether in connection with a subpoena, civil litigation, regulatory investigation, or data breach. AI-generated transcripts can expand the volume of data subject to litigation hold obligations, potentially increasing e-discovery costs. This risk is exacerbated by poor data retention policies that result in transcripts being retained longer than necessary.

Table 3. United States—Key Compliance Triggers and Practical Implications

Compliance Trigger	What to Watch for in Practice
Consent standards	Federal law requires one-party consent; a number of states require all-party consent. Organizations must map participant locations and apply the strictest applicable standard.
Biometric data	Voiceprint generation triggers BIPA (Illinois), CCPA/CPRA (California), and analogous state laws protecting sensitive personal information. Written or affirmative consent may be required before collection.
Third-party access	Vendor access to recordings may trigger CIPA liability as an unauthorized eavesdropping third party. Review vendor terms of service and data-handling practices.
Attorney-client privilege	Recordings of legal conversations transcribed by third-party services may waive privilege where vendor terms authorize data access by third parties.

Compliance Trigger	What to Watch for in Practice
Record retention and disposal	Define retention periods for AI-generated transcripts that align with applicable litigation hold obligations, industry-specific retention requirements, and state data disposal statutes.

Other Practical Considerations

Organizations deploying AI notetakers in the United States should conduct jurisdiction mapping to identify applicable consent standards based on participant locations, applying the strictest consent standard. As remote and hybrid work arrangements continue to evolve, participant locations may change frequently, and organizations should avoid relying on assumptions based on office assignments or prior meeting history.

Given the patchwork of state laws, organizations should review AI notetaker vendor terms of service to assess whether recordings may be used for model training or accessed by third parties, and negotiate contractual restrictions where necessary to avoid CIPA liability exposure.

For meetings involving privileged communications, organizations should evaluate whether the use of third-party AI notetakers creates an unacceptable risk of privilege waiver, particularly given that AI may indiscriminately capture privileged information alongside non-privileged business purpose communications, that can weaken privilege claims over the AI notetaker's output. This risk is no longer theoretical. In *United States v. Heppner*,[8] the court declined to extend attorney-client privilege to materials a defendant prepared using a consumer-grade generative AI platform. On the threshold question, the court was unequivocal: "Because Claude is not an attorney…that alone disposes of Heppner's claim of privilege." The court further held that recognized privileges require "a trusting human relationship" with "a licensed professional who owes fiduciary duties and is subject to discipline," and that "[n]o such relationship exists, or could exist, between an AI user and a platform such as Claude." The court rejected the argument that privilege attached once the materials were shared with counsel because "non-privileged communications are not somehow alchemically changed into privileged ones upon being shared with counsel" and found that Heppner "could have had no 'reasonable expectation of confidentiality in his communications' with Claude" given the platform's policy reserving the right to disclose user data

to third parties. The court left open a narrow exception noting that "had counsel directed Heppner to use Claude, Claude might arguably be said to have functioned in a manner akin to a highly trained professional who may act as a lawyer's agent within the protection of the attorney-client privilege"; but absent such direction, the court found that "Heppner's use of Claude fails to satisfy either of these rules," leaving users of consumer AI platforms with no privilege protection to claim.

Established privilege doctrine points in the same direction. *United States v. Kovel*,[9] permits privilege to extend to a third-party expert, but only where that expert's involvement is necessary to facilitate communication between attorney and client (not merely to record it). An AI notetaker, whose function is to transcribe fits uneasily within this exception, to which courts have applied *Kovel* with some strictness. In *Monterey Bay Military Housing, LLC v. Ambac Assurance Corp.*,[10] for example, the court found privilege waived because the party invoking it could not demonstrate that the third-party advisors present were necessary to translate or interpret information for counsel's legal analysis.

Work-product protection operates under a somewhat different standard. In *Warner v. Gilbarco, Inc.*,[11] the court held that disclosure to a third party does not waive work product protection unless it materially increases the likelihood that an adversary will obtain the materials; but even that analysis turns on the vendor's data retention and third-party sharing practices, making vendor due diligence essential in either context.

Organizations should therefore consider limiting access to the privileged output of an AI notetaker, as broad access beyond need-to-know personnel can undermine claims of confidentiality. The evidentiary status of AI-generated records, including their admissibility and weight in litigation and regulatory investigations, remains an evolving area, and organizations should consult with legal counsel to assess discovery implications before adopting broad retention practices.

Organizations should also make sure to use training to reinforce the importance of using only organization-approved AI notetakers (and all AI tools). Using personal or public instances of AI notetakers will undercut privilege and increase the risk of data leaks or compliance violations. Many people have grown accustomed to using such tools in their everyday lives and the risk of confidential data in unapproved tools is significant.

Organizations should also monitor emerging enforcement trends at both the federal and state levels. The Federal Trade Commission has signaled an increasing willingness to scrutinize AI-driven data practices under its Section 5 authority to prohibit unfair or deceptive acts or practices, as illustrated by its September 2024 Operation AI Comply sweep, which resulted in actions against five companies for allegedly deceptive or unfair uses of AI, including a $193,000 settlement with DoNotPay over inflated claims about its AI-powered legal service, and a consent order against Evolv Technologies over unsubstantiated representations about its AI-based security screening systems. The FTC's action against Rite Aid, which arose from the company's use of AI facial recognition technology without adequate safeguards, further reflects the agency's willingness to scrutinize AI data practices beyond the advertising context. State attorneys general have likewise become more active in pursuing enforcement and pre-enforcement activity.

On the enforcement side, the Texas Attorney General's 2024 settlement with Pieces Technologies (the first of its kind under a state consumer protection statute involving generative AI) demonstrates that state offices are prepared to act on insufficient disclosure and consent practices even in the absence of AI-specific legislation, relying instead on existing unfair and deceptive acts or practices authority. California's attorney general similarly secured a settlement with DoorDash resolving allegations that the company sold consumers' personal information without proper notice or an opportunity to opt out, in violation of the California Consumer Privacy Act and the California Online Privacy Protection Act. On the pre-enforcement side, several attorneys general have formally put the market on notice that existing law applies to AI without modification: Massachusetts' attorney general was the first in the country to issue such guidance, clarifying in April 2024 that the Massachusetts Consumer Protection Act applies to AI to the same extent as any other product in commerce, with Oregon and New Jersey issuing comparable advisories later that year and into 2025. Pre-enforcement guidance of this kind is a recognized precursor to active enforcement, and organizations that disregard it do so at their own risk.

Finally, organizations should establish clear internal guidance on how AI-generated meeting records interact with manually prepared notes, including which version controls in the event of inconsistency and how factual disputes will be resolved.

China

China's regulatory framework relevant to AI notetakers sits at the intersection of three overarching data laws: the Personal Information Protection Law (PIPL), the Cybersecurity Law, and the Data Security Law, supplemented by AI-related measures, including rules on generative AI. PIPL applies to any processing of personal information within China, as well as processing conducted outside China where the purpose is to provide products or services to, or analyze the behavior of, individuals within China. As AI notetakers capture audio input and produce transcripts, summaries, analysis, and metadata containing personal information, their use in meetings involving participants within China will typically engage PIPL obligations. AI notetaking often involves processing sensitive personal information, such as voice and biometric characteristics, triggering stricter duties, including enhanced notice and separate consent. PIPL also mandates a Personal Information Protection Impact Assessment (PIPIA) for certain processing activities, including sensitive personal information and cross-border data transfers, both commonly implicated by AI notetakers.

Service providers utilizing generative AI, deep synthesis technologies, or algorithmic recommendation technologies to provide internet information services or content generation services in China are subject to AI-related regulations imposing obligations concerning algorithm transparency, security assessments, content moderation, and mandatory labeling of AI-generated content (AIGC). Businesses using AI notetaker tools in China should choose vendors that demonstrate compliance with these requirements and support onshore processing or can operate without exporting data where feasible. Tools should allow users to disable model training on input data and restrict access, sharing, and retention. These features help meet PIPL principles of purpose limitation, data minimization, and security. Businesses should also ensure AI tools have labeling controls to mark AI-generated or AI-edited outputs in line with China's AIGC labeling rules, which came into force in September 2025.

Table 4. China—Key Compliance Triggers and Practical Implications	
Compliance Trigger	**What to Watch for in Practice**
Enhanced notice (PIPL)	PIPL requires disclosure of the data controller's identity and contact method, purpose, processing methods, categories of data, retention period, and how individuals may exercise their rights. This is more prescriptive than general notice requirements.
Transparency and labelling	Users publishing AI-generated content online (such as meeting summary or takeaway) are also required to declare and label such content using the labelling functions provided by the service provider. Users shall not maliciously delete, alter, hide, or forge any labels on AI-generated content.
Cross-border data transfers	Transfers of personal data outside China may need to satisfy one of the prescribed mechanisms, i.e., security assessment, certification, or standard contract, unless an exemption applies. Enhanced notice, separate consent, and PIPIA are also required.

Other Practical Considerations

Cross-border data flows remain a significant area of exposure. Business users should map end-to-end data flows for AI notetaking, confirm whether any data leave mainland China, and assess whether a cross-border data transfer exemption (e.g., human resource management, performance of contracts, transfer of non-sensitive personal information of fewer than 100,000 individuals) genuinely fits the use case. Where no exemption applies, users should select the appropriate transfer mechanism (security assessment, certification, or standard contract) and maintain comprehensive governance records, including consent logs, PIPIA documentation, and vendor contractual safeguards.

Organizations should anticipate that enforcement posture will continue to evolve. The labelling requirements introduced in September 2025 signal an increasing focus on transparency and traceability of AI-generated content, and regulators can often invoke overlapping regimes where breaches involve network security, personal data protection, and AI. Documented governance will be central to demonstrating compliance in any regulatory engagement.

Brazil

Brazil's General Data Protection Law (LGPD, Statute No. 13,709/18) applies to the processing of personal data through AI notetakers whenever the relevant processing activity is connected to Brazil. This includes situations where processing takes place in Brazilian territory, involves individuals located in Brazil, or relates to personal data collected in Brazil, regardless of where the organization is established or where data is ultimately stored.

AI notetakers fall within LGPD's scope because their operation entails collecting and processing audio recordings, transcripts, summaries, and related metadata that constitute personal data. In many deployments, this data is collected in Brazil but stored, accessed, or processed outside Brazilian territory, triggering additional compliance obligations related to international data transfers.

In an employment context, Brazilian labor law affords employers greater latitude to implement proportionate monitoring that is necessary for security and legitimate management purposes, subject to LGPD requirements. However, systematic recording of employee meetings must be carefully calibrated: monitoring that exceeds what is necessary or lacks clear justification may be challenged as excessive surveillance, potentially giving rise to claims of moral harassment or violation of employee dignity under constitutional protections. Organizations should ensure that AI notetaker deployment in internal meetings is supported by legitimate business purposes, clearly disclosed to employees, limited to necessary data, and implemented proportionately.

Rather than restating the statute, some examples of key compliance considerations arising from this data processing in Brazil can be summarized as in Table 5.

Table 5. Brazil (LGPD)—Key Compliance Triggers and Practical Implications

Compliance Trigger	What to Watch for in Practice
Consent dynamics	Where consent is used, ensure it is informed and voluntary. Extra caution is required in employment contexts due to power imbalance concerns.
Voice and biometric data	Voice recordings used solely for transcription may fall under general personal data. Use cases involving voiceprints or unique identification trigger heightened obligations.

Compliance Trigger	What to Watch for in Practice
International data transfers	AI notetaker data is often stored or accessed abroad. Transfers must rely on an authorized transfer mechanism. Organizations must assess whether Brazilian Standard Contractual Clauses (Brazilian SCCs) or other National Data Protection Authority (ANPD)-approved safeguards are required and ensure they are properly implemented.
Regulatory oversight (ANPD)	Expect increasing scrutiny of AI, biometric data, and sensitive processing. LGPD requires a Personal Data Protection Impact Report for processing activities that may pose significant risks to data subjects, which may include AI notetaker deployments involving sensitive data, large-scale processing, or systematic monitoring. Documented governance and impact assessments are essential.

Practical Considerations

From a practical standpoint, organizations should assume that LGPD transparency obligations require participant-facing documentation to be made available in Portuguese, including privacy notices, consent language, and information regarding international transfers. Documentation prepared solely in foreign languages may undermine the ability to demonstrate transparency and informed participation by data subjects located in Brazil.

For global organizations, LGPD aligns closely with internationally recognized data protection principles. However, local execution is critical: defensible compliance depends on clear visibility over where data flows, how international transfers are legitimized under ANPD-approved mechanisms, and how those choices are documented.

Organizations should also be aware of the joint liability framework under LGPD. Data controllers and processors may be held jointly and severally liable for damages caused to data subjects. This means that organizations deploying AI notetakers may share liability with the tool vendor for data protection violations, even where the breach originates in the vendor's systems or practices. Vendor contracts should clearly allocate responsibilities, include indemnification provisions, and require compliance with LGPD

obligations. Due diligence on vendor data-handling practices is essential to mitigate shared liability exposure.

European Union

Global organizations will need to assess whether data processed by the AI notetaker falls in scope of the General Data Protection Regulation (GDPR)—if participants in calls are based in Europe, that is likely to be the case. It may be challenging for the data controller to define the legal basis for processing the personal data, given that the type of personal data processed by the AI notetaker can vary significantly, depending on the context in which it is used. For example, if participants to a meeting discuss their health—or the health of a third party—this would constitute special category data that can only be processed on specific legal grounds, such as explicit consent. Obtaining consent of the participants may also be advisable under national laws of EU member states, for example, to respect constitutional rights protecting confidentiality of communications and personality rights, and to avoid infringing criminal law statutes prohibiting unauthorized recordings. These laws vary depending on the relevant EU member state.

Beyond data protection requirements, generating records and documents on an automated basis may increase the risk that confidential information becomes available to third parties. Organizations should therefore assess how recordings, transcripts, and notes should be handled and stored. Vendor due diligence regarding data processing is advisable, as well as understanding how the output of AI notetakers fits into broader data retention policies.

Data processed in an employment context can be subject to more specific national rules, such as requiring the involvement or approval of a works council. Organizations should therefore consider whether specific guardrails are needed around use of AI notetakers in an employment context.

Carefully assessing the legal impact of use of AI notetakers in an employment context is also recommended from an AI regulatory perspective. The EU Artificial Intelligence Act provides that some AI use cases are "high risk." Use of AI systems for specific use cases in recruitment, or to monitor and evaluate employees, can trigger the high-risk categorization. Exemptions may apply, but this would require a case-by-case legal analysis. Organizations using high-risk AI systems will be subject to a range of compliance

requirements, such as monitoring the system's operation, retaining logs generated by the system, and assigning human oversight to competent persons to oversee the use of the system. Even where the AI system is not high risk, the EU AI Act requires employers to take measures to ensure that individuals have a sufficient level of AI literacy to use these tools.

Table 6. European Union—Key Compliance Triggers and Practical Implications

Compliance Trigger	What to Watch for in Practice
Special category data	Health information or other sensitive data discussed in meetings triggers GDPR requirements, including explicit consent. Context-dependent data classification requires case-by-case assessment.
Member state variations	National laws may impose additional requirements (e.g., constitutional protections for communications confidentiality, criminal prohibitions on unauthorized recordings). Consent may be advisable even where not strictly required under GDPR.
Works council involvement	Data processed in an employment context may require works council involvement or approval under national labor laws. Consider whether specific guardrails are needed for internal meetings.
EU AI Act (high risk)	AI notetakers used for recruitment or employee monitoring/evaluation may be classified as high-risk AI systems, triggering compliance requirements, including system monitoring, log retention, and human oversight by competent persons.
AI literacy obligation	Even where the AI system is not high risk, the EU AI Act requires employers to ensure individuals have sufficient AI literacy to use these tools appropriately.

Other Practical Considerations

Organizations should conduct a mapping exercise to identify which EU member state laws apply to their AI notetaker deployments, particularly where participants are located across multiple jurisdictions. The interplay between GDPR, national

communications privacy laws, and employment regulations creates a layered compliance environment that cannot be addressed through a single EU-wide policy. Where AI notetakers may be used in recruitment or performance evaluation contexts, organizations should assess whether the high-risk classification under the EU AI Act applies and implement the requisite compliance measures accordingly.

United Kingdom

The UK regulatory landscape relevant to AI notetakers draws on the UK GDPR and the Data Protection Act 2018, supplemented by sector-specific regulatory requirements and common law principles. As in the European Union, the UK GDPR requires organizations to identify a lawful basis for processing personal data captured by AI notetakers, provide clear notice to participants, and observe data minimization and purpose limitation principles. However, the UK context also raises additional questions in relation to legal professional privilege.

Legal professional privilege protects confidential communications between a lawyer and their client from disclosure to third parties. When AI notetakers are deployed in meetings involving legally privileged discussions, the recordings, transcripts, and summaries generated by these tools may compromise that privilege. The core risk is that inputting privileged information into an AI tool operated by a third-party vendor may amount to disclosure to a third party, thereby waiving the privilege that would otherwise attach to those communications.

The Courts and Tribunals Judiciary has advised that users "should treat all public AI tools as being capable of making public anything entered into them." Additionally, *United Kingdom v. Secretary of State for the Home Department*[12] emphasizes the distinction between the use of open versus closed AI systems. Uploading confidential or privileged information into an open AI tool places it in the public domain, thereby waiving legal privilege and potentially breaching confidentiality obligations. Closed AI tools, which do not make information publicly available, can be used for tasks like summarizing "without these risks." Although users should still handle privileged materials carefully and store them securely.

It is also consistent with the U.S. federal court decision in *United States v. Heppner*, where documents created using a public AI platform were held not to be protected by attorney-client privilege. While the two cases addressed slightly different issues, both indicate that the use of public AI tools with privileged materials may jeopardize confidentiality and privilege, depending on the facts.

Table 7. United Kingdom—Key Compliance Triggers and Practical Implications

Compliance Trigger	What to Watch for in Practice
Legal professional privilege	Inputting privileged information into a third-party AI tool may waive privilege. The core risk is that vendor access to recordings constitutes disclosure to a third party.
Open versus closed AI systems	Uploading privileged information to open/public AI tools places it in the public domain, waiving privilege. Closed systems that do not make information publicly available present lower risk but still require careful handling.
UK GDPR alignment	Requirements for lawful basis, notice, data minimization, and purpose limitation align with EU GDPR.

Other Practical Considerations

Organizations deploying AI notetakers in the UK should implement clear policies restricting use of AI recording and transcription tools in meetings involving legally privileged discussions, and ensure any use of AI involves closed-source systems. Where AI notetakers are used in meetings that may touch on privileged matters, organizations should assess whether adequate safeguards exist to prevent privilege waiver, including evaluating vendor data-handling practices, whether recordings are accessible to third parties, and whether terms of service authorize the vendor to access or reuse meeting data.

Implementing Global Governance

Effective AI notetaker governance requires translating the cross-cutting principles and jurisdiction-specific requirements outlined above into operational reality. Organizations should establish

clear internal policies defining scope of use, consent and notice protocols, vendor management standards, retention rules, training requirements, and incident response procedures. These governance mechanisms must be periodically reassessed as regulatory expectations evolve, enforcement activity increases, and tool capabilities change. The goal is not perfect harmonization across jurisdictions, but controlled variation that preserves legal defensibility without undermining operational efficiency.

Organizations should also consider operationalizing AI notetaker governance through a tiered meeting classification model. Routine administrative meetings may be eligible for approved AI notetaker use subject to standard notice, retention, and access controls. Meetings involving legal advice, human resources investigations, employee performance, regulated-client matters, sensitive personal information, trade secrets, board or executive deliberations, or cross-border participants should require heightened approval or default to no AI notetaker use unless legal, privacy, and information security safeguards have been confirmed. The governance framework should also require approved vendor lists, retention limits, deletion workflows, participant notices, consent logs where required, human review before material reliance, and escalation procedures for unauthorized or external AI notetakers.

Closing Perspective

AI notetakers are part of a broader shift toward ambient data collection in modern workplaces and business interactions. The legal exposure they create does not arise from extraordinary misuse, but from ordinary deployment in environments where governance has failed to keep pace with technological capability.

Early decisions around vendor selection, consent mechanisms, and retention practices shape long-term risk. Organizations that invest in proportionate, well-documented governance frameworks position themselves to capture productivity gains while maintaining credibility with regulators, courts, and business partners.

For global organizations, success lies in coordinated, jurisdiction-aware governance grounded in widely recognized principles and adapted thoughtfully to local requirements. Responsible AI notetaker deployment has become an indicator of mature compliance culture, not merely a technical or operational choice.

Notes

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2. In addition to potential civil liability, recording a conversation without obtaining the required consent from all parties in these states may give rise to criminal liability.
3. Cal. Penal Code § 631(a).
4. Conn. Gen. Stat. § 31-48d.
5. Del. Code tit. 19, § 705.
6. N.Y. Civ. Rights Law § 52-c.
7. In re Otter.AI Privacy Litigation, No. 5:25-cv-06911 (N.D. Cal. Filed Aug. 15, 2025).
8. United States v. Heppner, No. 25 CR. 503 (JSR), 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026).
9. United States v. Kovel, 296 F.2d 918 (2d Cir. 1961).
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11. Warner v. Gilbarco, Inc. (E.D. Mich. Feb. 10, 2026).
12. UK v. Secretary of State for the Home Department [2026] UKUT 81, available at https://caselaw.nationalarchives.gov.uk/ukut/iac/2026/81.

Life in the PFAS Lane: Recent Global Trends in PFAS Regulation

Lincoln Tsang and Julie Kvedar*

In this article, the authors discuss the status of the regulation of per- and polyfluoroalkyl substances across the European Union, the United Kingdom, and the United States.

Over recent years, global regulation of per- and polyfluoroalkyl substances (PFAS) has increasingly focused on restricting or phasing out non-essential uses, while permitting exemptions only for applications deemed critical to society. Notably, the European Union is advancing a comprehensive, near-total ban on over 10,000 PFAS under the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation, targeting the virtual elimination of these substances.[1] This article examines recent regulatory developments across the European Union, the United Kingdom, and the United States, with particular emphasis on compliance implications for the life sciences sector. Key events in 2026—including the progression of the EU REACH proposal toward final opinion, the European Chemicals Agency's (ECHA) 60-day public consultation on the Socio-Economic Analysis Committee (SEAC) draft opinion on PFAS restrictions,[2] and the U.S. Environmental Protection Agency's (EPA) extension of its PFAS reporting deadline to 2027[3]—underscore the urgency for companies to evaluate their product portfolios, supply chains, and regulatory exposure. This article reflects the status of global PFAS regulation as of the date of publication.

PFAS are a broad class of synthetic chemicals used to impart resistance to water, stains, grease, and heat, and are commonly referred to as "forever chemicals." They feature in a wide range of products, including non-stick cookware, food packaging, firefighting foam, stain-resistant fabrics, medical devices, and dental floss. Regulatory pressure has intensified due to PFAS' environmental persistence and bioaccumulation, alongside mounting—albeit

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varied—evidence linking PFAS exposure to health concerns such as elevated cholesterol, pregnancy-related hypertension, developmental effects, immune impacts, liver function changes, and certain cancers.[4] In response, policymakers are increasingly distinguishing between non-essential uses (where alternatives or reformulation may be feasible) and essential uses (where performance requirements, safety needs, or the absence of substitutes justify narrower, time-limited exemptions).

The commercial implications are already significant. A European Commission study of January 2026 estimates that, if current levels of PFAS pollution persist through 2050, the cost to European society could reach €440 billion, with the cost of treating polluted water alone exceeding €1 trillion.[5] For manufacturers, the Organisation for Economic Co-operation and Development's (OECD) analysis of the cosmetics sector indicates that reformulating to remove intentionally added PFAS can cost approximately €391,000 for a large company and €45,000 for a small company per formulation, with timelines ranging from 6 months to 4.5 years.[6] For life sciences companies, early action may mitigate risks associated with compressed development timelines, supply chain disruption, heightened regulatory enforcement, and reputational exposure as restrictions take effect.

A growing body of authoritative research supports the move toward broader PFAS restrictions, including the OECD's February 2024 cosmetics sector report (finding few technical barriers to PFAS removal),[7] Canada's March 2025 "State of PFAS" report (aggregating bioaccumulation science),[8] the April 2024 Zurich II Statement on PFAS (cautioning against broad "essential use" exemptions),[9] and the U.S. White House Office of Science and Technology Policy's March 2023 PFAS Report (recognising potential essential-use arguments for pharmaceuticals and medical devices).[10] Additionally, a November 2023 scientific review by Dewapriya et al. confirmed that certain PFAS in cosmetics may degrade to perfluorinated carboxylic acids, which are restricted under EU REACH.[11] Collectively, these sources highlight the policy direction and the importance of sector-specific exemption analysis for life sciences companies.

European Union

The European Union is moving rapidly toward comprehensive PFAS restrictions, layering both group-based and sector-specific

measures across jurisdictions. While the overarching aim is to protect public health and the environment, practical challenges—particularly for the pharmaceutical sector—underscore the need for careful consideration of essential uses, the realities of substitution, and the potential impact on patient access and European competitiveness. Companies should use the current lead time to assess and adapt their product portfolios, supply chains, and compliance strategies in anticipation of these far-reaching changes.

The European Union continues to advance a sweeping proposed REACH restriction covering the manufacture, use, and import of more than 10,000 PFAS.[12] ECHA's Risk Assessment Committee (RAC) and SEAC have both endorsed EU-wide restrictions, subject to specific derogations.[13] RAC adopted its final opinion on 2 March 2026,[14] highlighting the persistent and hazardous nature of PFAS, their ability to contaminate groundwater and soil, cause serious health issues, and travel long distances in the environment. RAC concluded that current regulatory measures are insufficient and recommended additional risk management strategies—such as site-specific PFAS management plans, emission monitoring, supply chain communication, consumer labelling, safe use and disposal instructions, and mandatory emission reporting—to minimise PFAS emissions, particularly where derogations are granted.[15]

SEAC agreed its draft opinion on a PFAS restriction proposal on 10 March 2026,[16] supporting a broad restriction and emphasising the need for targeted derogations where alternatives are unavailable and the costs and benefits justify continued use. SEAC also recommends risk management measures for derogated uses, aligning with RAC's guidance, but notes that further evidence is needed to determine the proportionality of these measures.[17] Both committees' positions, published in late March 2026,[18] mark a significant step toward comprehensive EU-level action on PFAS, balancing environmental and health protection with socio-economic considerations.

The pharmaceutical sector, represented by the European Federation of Pharmaceutical Industries and Associations (EFPIA), has expressed deep concern regarding the opinions published by ECHA's scientific committees, which do not support derogations for PFAS in pharmaceutical uses.[19] EFPIA and its member companies share the ambition of protecting public health and the environment, but argue that the committees' opinions fail to reflect the realities of medicine development and the current availability of PFAS alternatives. The absence of clear and durable derogations for

medicines would compromise patient access to critical treatments and risk driving pharmaceutical manufacturing out of Europe. PFAS materials are essential for manufacturing processes, medicinal products, active pharmaceutical ingredients, delivery devices, and packaging used by millions of Europeans. Substituting these materials is not straightforward, requiring extensive research and development, legal, and regulatory approvals. EFPIA emphasises that, at a time when EU leaders are calling for greater competitiveness and strategic autonomy, policy decisions should fully consider the significant disruption that PFAS restrictions would cause for patients, healthcare systems, and companies operating in Europe.[20] Similarly, The MedTech Europe representing the medtech industry in Europe is lobbying for exemptions from the EU's proposed universal PFAS restrictions. While ECHA advocates for phasing out PFAS, manufacturers caution that a blanket ban could disrupt the supply of more than 100,000 essential medical devices—including catheters, implants, and surgical equipment—which depend heavily on PTFE and other fluoropolymers.[21]

ECHA's final public consultation on the SEAC-proposed PFAS restriction ran from 26 March 2026 to 25 May 2026.[22] SEAC is expected to adopt its final opinion by the end of 2026, after which the file will move to the European Commission.[23] Restrictions are not expected to begin applying for several years thereafter, but the direction of travel is already clear. Companies placing products on the EU market, particularly those with long development cycles or complex supply chains, should treat the remaining lead time as a preparation window rather than a reason to defer action.

The European Union has also tightened sector-specific controls, including an EU-wide restriction on PFAS in firefighting foam (entered into force in October 2025, with phased restrictions and derogations),[24] food-packaging PFAS thresholds (effective 12 August 2026),[25] and Drinking Water Directive limits on PFAS in drinking water (effective 12 January 2026).[26] EU Directive 2026/805, which entered into force on 11 May 2026, adds PFAS to the lists of surface water and groundwater pollutants, and member states must transpose those amendments into national law by 22 December 2027.[27] This layering of group-based and sector-specific measures increases the compliance burden for businesses, which may be affected not only by product restrictions but also by environmental monitoring, remediation, and disclosure obligations.

Member state action is accelerating alongside EU-wide measures. France's February 2025 law bans PFAS in cosmetics and specified textiles from January 2026, with broader textile bans to follow beginning in 2030.[28] The Netherlands has added PFAS to its "Substances of Very High Concern" list, triggering emission-reduction planning obligations. These national initiatives reinforce the broader EU trajectory and may create earlier or more granular compliance obligations even before the proposed EU REACH restriction takes effect.

United Kingdom

The UK's regulatory approach to PFAS has been precautionary and collaborative, prioritising expanded environmental monitoring and targeted statutory reforms over immediate blanket bans. The UK PFAS Plan, published by the UK Department for Environment, Food & Rural Affairs on 3 February 2026,[29] includes a significant increase in surveillance efforts, such as increased water, soil, and coastal wildlife testing to identify pollution hotspots.[30] The government is currently consulting on the introduction of strict, statutory limits for PFAS in drinking water, with the Drinking Water Inspectorate presently applying a precautionary, non-statutory guidance limit of 0.1 micrograms per litre.[31] The Health and Safety Executive (HSE) oversees existing restrictions under UK REACH, with bans already in place for certain legacy chemicals such as perfluorooctanoic acid (PFOA).[32] Looking ahead, the United Kingdom has indicated intent to reform its REACH framework by 2028 to align more closely with the European Union, aiming to phase out PFAS in everyday consumer products while maintaining exemptions for essential industries.[33]

The UK's approach seeks to balance precaution, industry collaboration, and evidence-based policy development. However, practical challenges of substitution and criticism from environmental groups highlight ongoing tensions between the need for robust public health protections and the realities of industrial innovation and supply chain management. Industry bodies have cautioned against sweeping, immediate bans, citing the lack of safe, viable alternatives in specialised sectors such as hydrogen production and medical devices, and arguing that a measured transition is necessary to avoid disrupting critical supply chains and innovation.[34]

In contrast, environmental groups and parliamentary committees have criticised the government's approach, contending that it relies too heavily on further monitoring and voluntary industry measures rather than implementing aggressive, preventative bans on non-essential PFAS, potentially delaying meaningful action and prolonging exposure risks.[35]

To date, the United Kingdom has taken a more measured approach than the European Union, with only two PFAS substances—PFOA and perfluorinated silane—currently restricted under UK REACH. The HSE's 2023 Regulatory Management Options Analysis adopted a narrower definition of PFAS than the EU's proposed universal restriction, excluding certain fluoropolymers and sectors such as medical devices, transport, and cosmetics.[36] For life sciences companies, this narrower scope may offer greater near-term flexibility in the United Kingdom compared to the European Union, but it should not be assumed to provide long-term regulatory certainty, as future reforms could broaden restrictions. Recent UK actions signal a gradual tightening of the regulatory framework, including the ban on PFOA-based firefighting foams (effective 4 July 2025), an HSE public consultation on broader PFAS restrictions in firefighting foams (closed in February 2026),[37] and the publication of the UK's first national PFAS action plan in February 2026.[38] While the UK's pace remains more cautious than the EU's, companies operating across both markets should anticipate partial convergence over time and remain alert to differences in scope, timing, and exemptions. Companies should closely monitor regulatory developments and prepare for increasing compliance obligations as the United Kingdom moves toward a more comprehensive PFAS framework.

United States

In the United States, PFAS regulation is developing on two tracks: federal agencies are reassessing the scope and timing of certain requirements, while states continue to advance aggressive product restrictions. At the federal level, the Food and Drug Administration published its report on PFAS in cosmetics on 29 December 2025, as required by the Modernization of Cosmetics Regulation Act of 2022 (MoCRA).[39] The report identified 51 PFAS used in 1,744 cosmetic formulations but did not reach definitive

safety conclusions, instead finding that toxicological data for most PFAS are "incomplete or unavailable" and underscoring continued uncertainty about consumer safety.[40] No federal law or regulation currently prohibits PFAS intentionally added to cosmetic products.[41]

The EPA's PFAS reporting rule under Section 8(a)(7) of the Toxic Substances Control Act (TSCA) requires manufacturers to report detailed use, production, and exposure data from 2011 to 2022.[42] The rule has undergone several deadline extensions, with the reporting deadline now extended to January 2027.[43] In November 2025, the EPA also proposed narrowing the rule's scope by introducing exemptions for PFAS in certain products, including imported articles, low-concentration mixtures, certain by-products, and research and development chemicals.[44] A final rule addressing these proposed exemptions is expected later in 2026. These changes may reduce the immediate burden for some businesses, but they also increase the importance of remaining abreast of new developments.

The drinking water picture remains especially dynamic. In April 2024, the EPA set enforceable Maximum Contaminant Levels (MCLs) for six PFAS chemicals.[45] These standards are considerably more stringent than the agency's 2016 advisory levels, and public water systems must begin monitoring by April 2027 and implement solutions to reduce PFAS by April 2029. Although the current administration moved to rescind the MCLs and underlying regulatory determinations for four of the six PFAS chemicals (those other than PFOA and perfluorooctane sulfonic acid (PFOS)), the D.C. Circuit denied those rescission attempts in two rulings issued on 21 January and 19 March 2026, leaving all six MCLs in force.[46] The regulatory picture may shift again, however: on 20 May 2026, the EPA published two proposed rules in the Federal Register, one extending the PFOA/PFOS compliance deadline to 2031 and another proposing to rescind the regulatory determinations and remove the MCLs for the four remaining PFAS.[47] Public comments are open until 20 July 2026, and a public hearing was scheduled for 7 July 2026.[48] For companies with significant water use, manufacturing exposure, or environmental liabilities, this continuing uncertainty reinforces the need to monitor both litigation and rulemaking.

State legislatures continue to shape the most aggressive part of the U.S. PFAS landscape, with Maine and Minnesota enacting

similar broad restrictions on intentionally added PFAS in consumer products and several other states implementing product-specific restrictions on reporting obligations.[49] Maine's and Minnesota's prohibitions both generally take effect in 2032.[50] On 1 January 2026, new PFAS prohibitions or reporting requirements took effect in six states—Colorado, Connecticut, Maine, Minnesota, Vermont, and Washington—covering product categories such as cosmetics, cleaning products, cookware, and textiles.[51] California has separately restricted PFAS in cosmetics, food packaging, and menstrual products.[52] The result of this state action is, rather than a single national rule, an increasingly fragmented patchwork that may impose different requirements across product categories, distribution channels, and reporting frameworks. For companies selling across multiple states, this patchwork can create substantial compliance complexity, particularly where product redesign, supplier certification, or state-specific labelling and disclosure obligations may be required.

Conclusion

Across Europe, the United Kingdom, and the United States, regulatory activity concerning PFAS is intensifying, particularly in relation to non-essential consumer and industrial applications. While approaches differ in scope, pace, and the handling of exemptions, there is a clear trend toward reducing and ultimately phasing out PFAS use. The European Union is the most advanced, with a group-based restriction covering more than 10,000 substances nearing the final stages of scientific evaluation. The United Kingdom is adopting a more cautious approach, but its national PFAS action plan and targeted restrictions signal a gradual tightening of its regulatory framework. In the United States, federal policy continues to develop, especially in relation to EPA reporting and drinking water standards, while state-level bans are contributing to a fragmented compliance environment. For the life sciences sector, key considerations include the timing, breadth, and availability of sector-specific exemptions as restrictions are implemented.

Given this evolving regulatory landscape, practical steps may be required to prepare for future compliance requirements. For non-essential products, such as cosmetics, food packaging, and certain cleaning products, it may be beneficial to evaluate the feasibility

and timelines for PFAS removal and reformulation. For essential products, including medical devices and industrial applications, it is advisable to assess the necessity of PFAS for product performance or safety, map their use across supply chains, and monitor the development of exemption frameworks in relevant jurisdictions. More broadly, it is important to review PFAS-related exposure across product lines and geographies, examine supplier and contractual arrangements, assess reporting and recordkeeping obligations, and participate in consultation processes to ensure that sector-specific needs are reflected in final regulations.

Overall, the regulatory challenge posed by PFAS is becoming more complex, and policy objectives are increasingly aligned across major jurisdictions. Proactive assessment of PFAS exposure, adaptation of compliance strategies, and engagement with regulatory developments will support effective responses as legislative restrictions continue to evolve.

Notes

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50. 38 Me. Rev. Stat. § 1614; Minn. Stat. § 116.943.

51. Colo. Rev. Stat. § 25-15-604; Conn. Gen. Stat. § 22a-903c; 38 Me. Rev. Stat. § 1614; Minn. Stat. § 116.943; 9 V.S.A. §§ 2494b, 2494f–2494m, 2494x; Wash. Admin. Code § 173-337-110.

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Draft EU Merger Guidelines: Formalising a Decade of Enforcement Practice

Ciara Barbu-O'Connor, David Cardwell, Louis Delvaux, Catriona Hatton, and Mounir Younes*

In this article, the authors examine the public consultation launched recently by the European Commission on its draft revised Merger Guidelines.

The European Commission has launched a public consultation on its draft revised Merger Guidelines (Draft Guidelines), seeking to codify and consolidate developments in its merger control practice over the past decade. The intention is that the Draft Guidelines, once finalised and adopted, will replace the existing horizontal and non-horizontal merger guidelines (Current Guidelines) and introduce a single, integrated framework that reflects what the Commission claims is its increasingly broad and forward-looking approach to merger assessment.

While the fundamental legal tests and standards to be applied in the assessment of mergers would remain unchanged, the way in which mergers will be assessed is evolving. For dealmakers, the Commission wants to send a message that it intends to scrutinise mergers through a "wider lens," with greater focus on factors such as innovation, resilience, ecosystems, investment incentives, strategic positioning and long-term competitive dynamics—while also giving itself a more structured framework to recognise efficiencies and scale benefits where properly evidenced. For merging parties, the draft also opens the door to a more proactive efficiencies strategy: efficiencies are no longer treated only as a potential "defence" to outweigh or offset potential competitive harm identified by the Commission, instead they are elevated to a free-standing "theory of benefit" to be developed in parallel with the Commission's analysis.

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Context

The Draft Guidelines arrive against the backdrop of a broader EU-wide debate about competitiveness, scale, and industrial policy, including the recommendations of the Draghi Report, which called for an overhaul of the EU's approach to regulation, to encourage the growth of stronger European companies capable of competing globally. The report highlighted the importance of innovation, investment, and resilient supply chains in achieving those aims and emphasises the significant role played by EU competition policy in achieving more competitive markets. It concluded that the effectiveness of competition policy had so far been hindered by overly narrow application of the rules and the failure to adapt to profound changes in the global economy. The Draft Guidelines represent a significant part of the Commission's response to Draghi and the broader debate on European competitiveness and economic resilience, forming part of a broader push to lighten up on regulation overall and avoid an overly interventionist stance that could be seen as chilling investment or innovation.

Ultimately, though, the Draft Guidelines do not signal a major shift in enforcement. There is no proposed relaxation of the rules to respond to political pressure to facilitate the emergence of "European champions." The Commission repeatedly stresses in materials around the Draft Guidelines that mergers giving rise to a significant impediment to effective competition (SIEC)—the relevant legal standard under the EU Merger Regulation—must still be prohibited or remedied. Rather than rewriting the rules, the draft largely formalises and consolidates trends already visible in recent enforcement practice—while modernising the analytical framework for increasingly innovation-driven and strategically sensitive markets and potentially providing greater opportunities for merging parties to demonstrate where efficiencies arising from their transaction may outweigh competitive harm.

From Theories of Harm to Theories of Benefit

One of the headline changes in the Draft Guidelines is the Commission's move toward a more formally structured analytical framework. They codify the "more likely than not" standard for the Commission's overall SIEC assessment, while clarifying that

this standard applies to the ultimate conclusion rather than each individual piece of evidence or constituent fact. In practice, this confirms that the Commission may assess transactions holistically and reach an overall finding based on the totality of the evidence, even where individual arguments or evidentiary strands put forward by the parties are not independently persuasive.

For the first time, the Draft Guidelines expressly allocate the burden of proof: the Commission must demonstrate anticompetitive harm, while merging parties must substantiate efficiencies and other procompetitive effects. In that context, the Commission is expected to articulate a "theory of harm," while merging parties are expected to put forward a corresponding "theory of benefit" explaining how the transaction will generate procompetitive outcomes. While efficiencies have long been recognised in principle, they have rarely played a decisive role in practice—although the Commission has accepted efficiencies arguments as relevant supporting factors in some cases, e.g., M.6570—*UPS/TNT Express* in relation to network efficiencies and cost synergies. The proposed new framework gives efficiencies greater visibility and structure, including by (1) formally distinguishing "direct" from "dynamic" efficiencies, and (2) explicitly recognizing "out of market" and "collective benefits"—that is, allowing efficiencies in related markets or accruing to society more broadly to count toward the assessment, provided harmed consumers substantially overlap with the beneficiaries.

The Draft Guidelines explicitly acknowledge dynamic efficiencies in noting that mergers may:

- enable scale necessary for global competition,
- improve innovation capacity,
- strengthen resilience and access to critical inputs, and
- generate long-term, non-price benefits.

Importantly, the Draft Guidelines provide much more detailed guidance on how such benefits will be assessed, significantly more than under the Current Guidelines.

However, the underlying legal standard remains demanding: benefits must be verifiable, merger-specific and passed on to consumers. In practice, this means that merging parties will need to build robust, evidence-based narratives early in the process. While the Draft Guidelines are unlikely to produce a sudden increase

in successful efficiencies defences, their significance lies more in giving parties a clearer framework that should allow companies to better anticipate the Commission's assessment and more effectively structure their arguments. The Draft Guidelines also seek to remove the perceived disincentive to engaging early on efficiencies by confirming that a preliminary finding of harm is not a precondition to raising efficiencies arguments and by expressly encouraging early engagement with the Commission. The Commission has also signalled that the early presentation of efficiencies arguments should not in itself be interpreted as indicative of competition concerns. At the same time, robust, evidence-based narratives will remain critical to advancing a successful efficiencies case.

Innovation Takes Centre Stage

The Draft Guidelines codify the Commission's increasingly expansive approach to innovation and dynamic competition, already visible in recent decisional practice (e.g., M.7932—Dow/DuPont, M.8084—Bayer/Monsanto, and M.11177—Pfizer/Seagen).

On the one hand, the introduction of an "innovation shield" provides greater clarity for transactions involving start-ups and small innovators, suggesting that such deals are unlikely to raise concerns absent credible evidence of future competitive significance. The innovation shield introduces a structured safe harbour under which the Commission will, in principle, not find an SIEC where a transaction falls within one of the defined thresholds which vary depending on the type of overlap involved. For example, different thresholds apply to overlaps between research and development (R&D) capabilities, overlaps between pipeline products and existing products, and upstream or downstream relationships. In the case of acquisitions of start-ups, the safe harbour may still apply even where those thresholds are exceeded, provided that the acquirer is neither the largest player in the relevant market nor a DMA gatekeeper (i.e., a large digital platform designated under the EU Digital Markets Act). In practice, much will depend on how the Commission defines the relevant "innovation space," which is likely to be a key area of debate in early cases, as well as how broadly the Commission interprets its discretion to depart from the safe harbour in specific circumstances.

On the other hand, the Commission formalises its intervention framework where mergers:

- eliminate potential competitors,
- reduce innovation,
- strengthen ecosystems or data advantages, or
- create long-term foreclosure risks.

This twin-track approach brings into focus the Commission's increasing emphasis on future competitive dynamics, which has already featured prominently in its recent decisional practice (e.g., M.7932—Dow/DuPont, M.8084—Bayer/Monsanto, and M.10615—Booking/eTraveli). What is genuinely new is the introduction of an explicit and structured safe harbour for qualifying R&D-stage transactions (i.e., the "innovation shield"), which for the first time translates the Commission's case-driven innovation analysis into defined quantitative parameters potentially operating in the parties' favour.

An Expanded Enforcement Toolkit

The Draft Guidelines appear intended to provide a major shake-up of the Commission's merger control toolkit—the analytical frameworks, theories of harm, and evidentiary tools used to assess transactions—consolidating a range of theories of harm that have emerged incrementally through recent decisional practice. These include factors such as:

- labour market effects, including potential monopsony power;
- portfolio and ecosystem effects, enhancing bargaining power;
- access to commercially sensitive information;
- common ownership and minority shareholdings (a comparatively novel standalone theory of harm);
- dynamic foreclosure strategies, focused on long-term exclusionary incentives; and
- data, network, and platform-related competitive advantages.

The Draft Guidelines also indicate that innovation and dynamic competition are intended to be put at the centre of substantive

merger analyses; the draft contains new, standalone sections that provide more insight on where the Commission may see harmful effects in relation to:

- loss of investment and expansion competition,
- specific and general innovation competition,
- "killer" and "reverse killer" acquisitions, and
- future innovation capabilities and incentives.

For innovative or fast-growing businesses, this is likely to make innovation and future competitive dynamics a more central and structured part of merger review, even where current overlaps are limited.

At the same time, ecosystem and entrenchment concerns are elevated significantly. In this context, "ecosystems" refers broadly to interconnected products, services, or platforms that reinforce one another and can increase customer dependency or barriers to switching. A new standalone theory of harm—"entrenchment of a dominant position"—targets acquisitions by firms with strong platform or ecosystem positions where the transaction could reinforce barriers to entry or deepen customer dependency within an ecosystem.

Most of these concepts are codifications of existing decisional practice rather than analytical innovations. Some features, however, are genuinely novel, including:

1. abandoning the traditional horizontal/non-horizontal silo in favour of eight standalone theories of harm applicable to all merger types;[1]
2. common ownership as a standalone theory of harm;
3. the "diagonal merger" concept (neither horizontal nor vertical, capturing acquisitions of assets or customer bases on which rivals of the other party rely), with reduced scope for efficiency defences;
4. loss of investment competition as a distinct theory of harm, capturing capital-intensive sectors (telecoms, energy, transport) where firms compete through capacity and infrastructure investments rather than R&D; and
5. the introduction of "pivotal capacity" as a quantitative tool in capacity-constrained markets (measuring the share of demand that cannot be met without a given firm's capacity, particularly relevant in electricity and gas).

Practical Implications of the Current Drafting

For dealmakers, for companies looking at joint venture projects, even for parties gearing up to engage in minority acquisitions, the Draft Guidelines are going to have an impact. The substantive legal standards—the SIEC test, the cumulative criteria for efficiencies, and the frameworks for foreclosure, innovation, and potential competition—remain broadly consistent with the Commission's Phase II decisional practice over the past two decades. What changes is the structure and transparency of the Commission's analytical framework, together with the expectations placed on parties during the review process. In practice, this is likely to require companies to engage earlier on issues such as innovation, efficiencies, resilience, and dynamic competition, supported by more developed economic evidence, internal documentation and forward-looking strategic narratives. At the same time, the Draft Guidelines provide sophisticated companies with a clearer framework for anticipating potential concerns and proactively structuring arguments in support of clearance.

From a deal-planning perspective, the Draft Guidelines' new eight-pillar structure means that a broader spectrum of theories of harm is likely to surface in pre-notification discussion, and risk assessments will need to extend beyond traditional horizontal overlaps to capture innovation, ecosystems, data, labour, and long-term dynamic effects, including the impact of a transaction on rivals' ability to scale.

In terms of opportunities, the Draft Guidelines contain several features that well-prepared parties should seek to leverage proactively. Particularly notable is the Draft Guidelines' express invitation to parties to articulate a "theory of benefit"—a structured, evidence-based narrative explaining how a transaction maintains or enhances effective competition, to consumers' benefit. This is significant not so much because it lowers the threshold of the legal test for accepting efficiencies arguments, but more because it could give parties a clearer framework for presenting procompetitive arguments early in the merger review process (rather than treating efficiencies as a reactive defence raised only after concerns emerge).

Parties may also seek to rely on the new distinction between "direct" and "dynamic" efficiencies, which creates room for investment- and innovation-based arguments; the "innovation shield" as a defensive avenue in mergers involving overlapping R&D; and

the recognition of out-of-market and collective benefits, particularly in areas linked to resilience, sustainability, and long-term investment. Across all of these, the Draft Guidelines reinforce the importance of early and substantive engagement with Directorate-General for Competition—supported by robust economic analysis and contemporaneous internal documents aligned with the parties' strategic narrative.

Looking ahead, the public consultation[2] on the Draft Guidelines ran until 26 June 2026, with further stakeholder engagement expected. While aspects of the drafting and emphasis may evolve through the consultation process, the broad direction of travel—toward a more structured, forward-looking, and innovation-focused framework—is unlikely to change materially. Final adoption is anticipated by the end of 2026, or early 2027.

Notes

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1. The eight pillars are (1) loss of head-to-head, (2) loss of investment and expansion competition, (3) loss of innovation competition, (4) loss of potential competition, (5) foreclosure, (6) entrenchment of a dominant position, (7) coordination, and (8) "other" anticompetitive effects (portfolio effects and access to rivals' commercially sensitive information).

2. https://ec.europa.eu/eusurvey/runner/7320e903-26bc-5a3d-c2fe-db7d19f20f05.

UK Government Signals Expansion of Consumer Class Action Regime

Jeremy Andrews, Patrick H. Reilly, James Wagner, and Emily J A Evans*

In this article, the authors discuss the trend in the United Kingdom toward bringing its consumer protection rules more into line with those of the European Union.

The landscape for collective actions in England and Wales is in a state of flux. A number of government-initiated reviews suggests further reform is on the horizon. The future is uncertain, but this article identifies a number of elements at play, which, taken together, may herald a far broader "class action" regime than currently exists in the jurisdiction.

Current Opt-Out Regime

The current regime for opt-out collective actions in the United Kingdom was introduced by the Consumer Rights Act 2015, which itself resulted from a government consultation on proposed reforms to competition litigation. The Act allowed opt-out claims to be brought in the Competition Appeal Tribunal (CAT) only.

The ten years since the Act came into force have seen claimant law firms increasingly seeking to "shoehorn" claims into the CAT with a view to taking advantage of the opt-out regime. In one well-publicised example—the "boundary fares" case[1]—when rejecting the class representative's claims, the CAT stated that "competition law is not a general law of consumer protection." As well as giving rise to a degree of artificiality, the rise in actions being brought before the CAT has placed strain on its resources.

The UK government is now considering several potential reforms in this area.

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Litigation Funding Review

Third-party litigation funding is integral to the viability of mass claims, particularly opt-out class actions. The viability of funding models was threatened by the Supreme Court of the United Kingdom's *PACCAR*[2] decision, which held that third-party litigation funding agreements which provided for the funder's fee to be based on and determined by reference to a percentage of the proceeds from a claim are damages-based agreements, and unenforceable against the recipient of funding unless they comply with certain rules.

The wide-reaching impact of this decision led the UK government to commission the Civil Justice Council (CJC) to carry out a review of litigation funding in England and Wales. The CJC's final report was published in June 2025. It highlighted the potential link between litigation funding and the spiralling costs seen in mass litigation, going on to recommend (among other things) the regulation of such funding and the introduction of legislation to reverse the decision in *PACCAR*.

Opt-Out Regime Review

Close on the heels of the CJC report, in August 2025 the Department for Business and Trade (DBT) launched a review of the operation and impact of the CAT's opt-out regime a decade on from its introduction via the Act. The original call for evidence recognised that the expansive use of the CAT's opt-out litigation procedure was placing significant burdens on businesses operating in the United Kingdom. The DBT's review seeks recommendations on potential improvements to the opt-out regime and the ability of consumers to hold businesses accountable in a way that is "accessible, efficient, and proportionate." A key focus of the review is the scope of the existing opt-out regime and establishing certainty for businesses around the certification process for claims brought in the CAT. The DBT's review is to take account of existing work relevant to the regime, including the CJC's report and stakeholders' responses to specific questions raised.

The call for evidence is now closed, and the UK government's response and proposals are awaited. These will be the subject of a separate consultation.

Consumer Class Actions Review

In parallel with the DBT review of the opt-out regime in the CAT, the UK government has asked the Law Commission of England and Wales to assess whether the enforcement of consumer laws in the United Kingdom could be strengthened via a dedicated consumer class actions regime, to operate outside the CAT. With an initial scoping questionnaire having been published in April 2026, the Law Commission's project aims to:

- Identify the benefits and risks of introducing a consumer class action regime, considering alternatives such as public enforcement and alternative dispute resolution;
- Recommend the design of such a regime, including whether claims should be opt-in and/or opt-out, and how classes and proceedings should be managed;
- Improve access to redress for consumers, ensuring efficient litigation at proportionate cost and effective distribution of damages; and
- Address concerns around litigation culture, the effectiveness of current opt-out regimes, and potential exploitation.

The review will also consider the conclusions of the DBT's review of the CAT's opt-out regime. The Law Commission expects to start work on the project in the autumn, and responses to the scoping questionnaire are due by 30 October 2026.

In Summary

- Third-party litigation funding is integral to the viability of mass claims, particularly opt-out class actions. The viability of funding models was threatened by the Supreme Court of the United Kingdom's *PACCAR* decision.
- The CJC carried out a review and recommended the regulation of litigation funding and the introduction of legislation to reverse the decision in *PACCAR*.
- The DBT launched a review of the operation and impact of the CAT's opt-out regime. The UK government's response and proposals are awaited.
- The UK government has asked the Law Commission of England and Wales to assess whether the enforcement of

consumer laws in the United Kingdom could be strengthened via a dedicated consumer class actions regime, to operate outside the CAT.
- The DBT's reviews into the CAT's opt-out regime and the introduction of a consumer class action regime reflect a policy trend toward modernising the UK consumer protection landscape to bring it more into line with EU jurisdictions.

A Shift Toward EU Standards of Consumer Protection?

When viewed alongside the UK government's overhaul of the product safety regime, the DBT's reviews into the CAT's opt-out regime and the introduction of a consumer class action regime reflect a policy trend toward modernising the UK consumer protection landscape to bring it more into line with EU jurisdictions. It is not yet clear if any of the regulations that are ultimately implemented will be as stringent as the EU Representative Actions Directive, the EU General Product Safety Regulation, or the EU Product Liability Directive. However, the direction of travel for the introduction of a more full-throated class action regime and revamped product safety framework seems to demonstrate the UK's commitment to maintaining some level of equivalence with its European neighbours.

It is to be hoped that an equilibrium is achieved between the protection of consumers on the one hand and that of business on the other.

Notes

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1. Justin Gutmann v. First MTR South Western Trains Limited, London & South Eastern Railway Limited, Govia Thameslink Railway Limited & Others [2025] CAT 64.

2. R (on the application of PACCAR Inc and others) v. Competition Appeal Tribunal [2023] UKSC 28.

United Arab Emirates: Countdown to Dubai Financial Services Authority's Updated Conduct Requirements

Philip Clarke and Tayler Sani*

In this article, the authors discuss the Dubai Financial Services Authority's finalized amendments to its framework for regulated roles (i.e., Licensed Functions), and the individuals performing them (i.e., Authorised Individuals).

Following consultation and industry feedback, the Dubai Financial Services Authority (DFSA) published finalised amendments to its rules governing Licensed Functions, Authorised Individuals, and broader staff conduct requirements in December 2025.

With these rules having taken effect on 1 July 2026, firms must now act to ensure compliance. Adherence to updated regulatory expectations will likely require modifications to existing governance arrangements, performance oversight mechanisms, record-keeping protocols, as well as to staff training programs.

Background

In its initial 2025 consultation, the DFSA proposed significant changes to its framework for regulated roles (i.e., Licensed Functions), and the individuals performing them (i.e., Authorised Individuals).

Notably, the proposals included removing prior DFSA authorisation requirements for compliance officers, finance officers, and senior managers. Instead, these roles would become "Designated Functions" managed through an internal, firm-level assessment and oversight framework, similar to the "certified roles" concept under the UK Senior Managers and Certification Regime.

While these initial proposals were intended to recalibrate the balance between direct DFSA oversight and firm-level accountability,

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the DFSA's December 2025 feedback statement confirmed that the more far-reaching proposals would not proceed. Consequently, the updated rules represent a more measured evolution to the DFSA's existing Authorised Individuals regime and conduct rules, rather than a shift to incorporating a certification-style model.

Key Takeaways

One of the most notable takeaways from the DFSA's feedback statement is that it will not proceed with the proposals to establish Designated Functions and Designated Individuals. As such, compliance officers, finance officers, and senior managers will continue to require prior DFSA approval to carry on these Licensed Functions.

There are, however, a number of updates to the DFSA's rules of which firms should be aware, including those discussed below.

Extension of Conduct Principles to Employees

Current DFSA rules in force require Authorised Individuals to meet prescribed conduct standards (Conduct Principles). These include requirements to act with due skill, care, and diligence; observe high standards of integrity and fair dealing; and deal with the DFSA in an open and cooperative manner.

In a move that aligns its rules with approaches taken in other jurisdictions (such as the United Kingdom), the DFSA has extended certain Conduct Principles to all employees of DFSA-authorised firms broadly involved in financial services activities or the management of the firm (excluding those carrying on ancillary roles such as drivers, secretaries, or audiovisual technicians).

Given this significant expansion of staff subject to the Conduct Principles, firms should provide appropriate staff training to ensure that newly captured employees understand what these Conduct Principles mean for them in the context of their day-to-day responsibilities.

Annual Assessment of Authorised Individual Fitness and Propriety

Firms are currently under a general obligation to ensure that their employees, including Authorised Individuals, are fit and

proper, and must maintain systems and controls in order to ensure (and demonstrate) compliance with this requirement. The DFSA have amended their rules to make clear that an Authorised Individual's fitness and propriety must be checked and confirmed at least once a year, with records of this annual attestation being kept and made readily available to the DFSA on request.

Criteria for Fit and Proper Assessments of Authorised Individuals

In addition to emphasizing the importance of a firm's role in assessing Authorised Individual's fitness and propriety, the DFSA used its feedback statement to reaffirm and clarify the key considerations relevant to such assessments.

One area of particular focus is where individuals perform Licensed Functions for more than one firm. In this context, the DFSA have reaffirmed its expectation that all firms, regardless of size, take an active role in making sure that any individual they appoint who performs a Licensed Function for more than one firm has sufficient time, capacity, knowledge, and resources to carry out their Licensed Functions effectively. In practice, the DFSA have noted that this will include considering, both at the point of authorisation and on an ongoing basis:

1. The number of other firms to which the individual provides services, the nature of those roles, and any risk that overlapping commitments could impair the individual's performance of the Licensed Function;
2. Whether any other appointments or responsibilities could affect the individual's ability to carry out their role for the firm to the required standard; and
3. Whether the individual has relevant experience and expertise of the firm's business model and sector and holds appropriate qualifications.

These expectations, which are addressed in the DFSA's updated rules, will be of relevance to a significant number of DFSA authorised firms. In a recent thematic review, the DFSA identified that 58 percent of the firms surveyed outsourced their compliance arrangements to consultants or Group compliance teams, arrangements under which individuals commonly perform Licensed Functions for more than one firm.

More broadly, the DFSA's updated rules and policy materials also provide further detail on the factors firms should take into account when assessing fitness and propriety. With the exception of a limited refinement to the guidance on financial soundness (where a potentially onerous requirement, to assess whether an individual is able to meet his or her debts as they fall due, has been recast as a consideration of any "material indications" of a poor credit score or an inability to appropriately manage personal finances), these factors are consistent with the existing guidance set out in the DFSA's Regulatory Policy and Process Sourcebook, and should therefore be familiar to authorised firms.

Next Steps

With the effective date of 1 July 2026 having passed, Authorised Firms should ensure that they are in compliance with the updated requirements.

In addition to any updates required to a firm's governance and oversight arrangements, the DFSA have made clear that relevant employees should have received appropriate training on the Conduct Principles ahead of the implementation date. Firms should also be prepared for increased scrutiny of their fitness and propriety assessments during the course of 2026, and take steps to ensure that their assessment frameworks, documentation, and ongoing monitoring processes are robust and consistently applied.

Note

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New Saudi Copyright Law: Legislating for the Future

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In this article, the authors explore the key changes introduced by the Kingdom of Saudia Arabia's new and modernised copyright law.

The creative industries sit at the heart of the Kingdom of Saudi Arabia's (KSA's) cultural and economic transformation and will play a key part in the success of Vision 2030[1] program. The Saudi Cultural Development Fund recently unveiled strategic investments of SAR 3 billion (approximately USD 933 million) to boost its creative economies, including film and television, performing arts, fashion, digital content, experience design, and emerging technologies. As an indication of the direction of travel, the KSA is targeting the creation of an additional 346,000 jobs in the cultural sectors and opening 370 new cinemas in the next four years.[2] Examples of flagship Saudi cultural projects include (1) the Red Sea Film Festival, which has swiftly become a staple of the international film industry circuit; (2) Riyadh Art (a city-wide project installing over 1,000 public artworks), which has grown from strength to strength since its inception in 2019; and (3) the Diriyah Biennale Foundation, which has bolstered the presence of Saudi heritage and culture at events across the KSA and abroad.

Against the backdrop of such an ambitious expansion strategy in the creative sector, it is perhaps unsurprising that, in a major legislative development, the Kingdom has taken the step of modernising the country's copyright framework through the issuance of a New Copyright Law,[3] which comes into force on 1 August 2026 (180 days from its publication in the Official Gazette).[4]

This article sets out some of the key changes introduced by the New Copyright Law, as against the Old Copyright Law and Old Copyright Law IRs.[5]

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Key Changes

- *Expanded Economic Rights*. There is some variation to the economic rights reserved to authors, including the licensing of the "economic exploitation" of works in general, and narrowing the scope of rental rights to specifically apply to audio recordings, audiovisual works, and computer software (subject to certain limitations).[6]
- *Online Content Providers Safe Harbour*. The New Copyright Law introduces a form of partial safe harbour for platforms that allow for the generation of user-generated content, subject to certain conditions being met, including (without limitation) that the "online content provider" (i.e., Platform) does not modify the content (subject to certain limited exceptions, such as technical modifications for the purposes of storage and transmission), does not have knowledge of any infringement, and removes any infringing content within a reasonable time after becoming aware of any infringement.[7]
- *No Express Right of Tracking*. The New Copyright Law does not provide for the "right of tracking" previously set out under Article 6 of the Old Copyright Law IRs, which gave certain creators an ongoing right to royalties on a percentage basis, even if they waive their ownership of the original copy of a work.
- *AI Exception*. The New Copyright Law sets out an exception for copying original works for the purposes of developing artificial intelligence (AI) products and algorithms.[8] However, the right is not absolute and contains certain caveats, the interpretation of which will be critical. This is particularly interesting given the recent reports of the Saudi Authority for Intellectual Property (SAIP) fining an individual for using artificial intelligence to modify and publish someone else's personal photograph without permission.[9]
- *Moral Rights*. The management of moral rights (which differ in their construction to the Old Copyright Law, although they are broadly aligned) now pass to the author's heir upon their death, rather than to SAIP. The moral rights of performance artists will be set out under the implementing regulations to the New Copyright Law.[10]

- *Exhaustion*. The New Copyright Law introduces an express recognition of a concept of exhaustion upon first distribution. It will be interesting to see whether the implementing regulations provider further clarity on this, in particular the extent to which the concept of exhaustion extends to digital distribution.
- *Works Created by Employees*. The New Copyright Law sets out the basic position that innovative works created by employees in the course of their employment will automatically vest with the employer (subject to certain exceptions) (i.e., equivalent to "work made for hire" in other territories).
- *Disability Access*. The New Copyright Law introduces a new exception that allows certain accredited entities (on a non-profit basis) to create copies of works without the author's permission in an alternative manner or form that enables a person with a disability to access the work "smoothly and easily," without prejudice to the moral rights in the original work.
- *Collective Rights Management*. The New Copyright Law expressly provides for the ability of rightsholders to delegate the management of all or some of the financial rights to "associations, companies, or other entities."[11] Although no further detail is provided, the recitals to the New Copyright Law indicate that SAIP and the Ministry of Culture will be drafting a set of regulations that will provide further details as to the relevant legal procedures in due course. This is a strong indication that we are likely to see one or more collective management organisations (CMOs) arise in the Kingdom in the coming years (a significant step and reflecting regional trends following the launch of the UAE's first music-specific CMOs in 2025).
- *Registration*. While registration is still not mandatory for copyright to arise, registration with SAIP creates prima facie evidence of ownership of a work, rebuttable by the provision of proof to the contrary.[12]
- *Rewards System*. The Chief Executive of SAIP has the power to grant financial rewards to SAIP employees who identify copyright infringements, which may prove to be a key incentive to SAIP employees to proactively identify instances of copyright infringement in the KSA.[13] Given

the ongoing problems of content piracy across the region, this will likely be welcomed by rights holders and broadcasters alike.

- *Higher Penalties*. The maximum fine for copyright infringement has increased from SAR 250,000 (approximately USD 66,000) to SAR 1 million (approximately USD 265,000) (which can be doubled for repeat offenders). The maximum prison sentence has also increased from six months to one year. Rightsholders maintain the right to bring claims for compensation.[14]

What's Next?

As is common with new laws in the KSA, a set of implementing regulations is due to follow within 180 days,[15] which will build on many of the broad rights and requirements detailed under the New Copyright Law. Some of those issues that are expressly identified as subject to further development under the implementing regulations to the New Copyright Law, not captured in the list above include (non-exhaustively):

- Provisions relating to neighbouring rights;[16]
- Provisions relating to terms and conditions in software licences (including those that may contravene public policy or morality);[17]
- Further detail with respect to the authors of audiovisual works;[18]
- Reversion of works to the public domain once the economic rights have expired or the author has voluntarily relinquished their rights;[19] and
- Cases where a work may be used without the author's permission and without compensation if such a use is non-commercial, does not conflict with the normal leverage of the work, and does not cause unjustified harm to the legitimate interests of the rights holders.[20]

The issues highlighted in this article are by no means exhaustive and there are nuances to the changes flagged here that will be important for those operating in the creative and technology sectors in particular to be aware of. These changes will likely necessitate

changes to current contractual and policy frameworks and practices in the KSA.

Notes

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German Court Declares an ICC Award Enforceable Against a Foreign State, Rejecting Sovereign Immunity in a Commercial Arms-Supply Dispute

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In this article, the authors review a German court decision that held that a foreign State may not invoke sovereign immunity to resist the recognition and enforcement of an arbitral award arising from a commercial arms-supply contract, and that a State that participates in the arbitration—all the more so where it brings a counterclaim—is precluded from later challenging the arbitration agreement before the German courts.

In a decision of 19 December 2025,[1] the Bavarian Highest Regional Court (Bayerisches Oberstes Landesgericht, BayObLG) declared an International Chamber of Commerce (ICC) award enforceable against a foreign State, rejecting the State's reliance on sovereign immunity, its challenge to the validity of the arbitration agreement, and its application for security for costs. The ruling reaffirms Germany's standing as an enforcement-friendly jurisdiction and addresses three issues that recur in the enforcement of awards against sovereign States: the scope of State immunity, the treatment of security for costs following Brexit, and the preclusion of jurisdictional objections raised for the first time at the enforcement stage. A Rechtsbeschwerde (appeal on points of law) is pending before the Federal Court of Justice.[2]

Background

The claimant, a company domiciled in the United Kingdom, contracted in 2008 with the procurement authority of a foreign

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State for the supply and installation of tactical communication systems in the vehicles of that State's armed forces, together with associated training. The contract contained an ICC arbitration clause providing for a seat in Geneva and the application of Swiss substantive law.

After unrest broke out in the State in 2011, the claimant terminated the contract, and a dispute arose over the lawfulness and consequences of that termination. The claimant commenced ICC arbitration in 2013; the State defended on the merits and brought a substantial counterclaim. In its 2016 award, the tribunal ordered the State to pay a principal sum in respect of the State's unjustified call on standby letters of credit, plus interest, and to bear the bulk of the costs of the arbitration.

The claimant sought partial recognition and enforcement (*Vollstreckbarerklärung*) of the award before the BayObLG, relying on the fact that the State owns two plots of land within the court's district. The State asserted immunity, contested the validity of the arbitration agreement, and applied for an order requiring the claimant to provide security for costs.

Key Holdings

State Immunity

The court reaffirmed that proceedings for a declaration of enforceability (*Vollstreckbarerklärung*) of an arbitral award are not enforcement proceedings (*Zwangsvollstreckung*) but a recognition proceeding *sui generis* (*Erkenntnisverfahren eigener Art*). The applicable test is therefore the one under the law of jurisdictional immunity, not the (narrower) law of enforcement immunity.

Germany adheres to the restrictive (as opposed to absolute) theory of sovereign immunity. Under the doctrine of restrictive immunity, a State enjoys immunity only for sovereign acts (*acta iure imperii*), not for conduct it undertakes like a private party (*acta iure gestionis*). The distinction turns on the *nature* of the act or legal relationship, not on its motive or purpose. Critically, the court held that although national defense and the maintenance of armed forces are sovereign functions, this does not prevent contracts connected with the sale of arms and munitions from being concluded on a private-law footing. By entering into the contract

and calling on the guarantees, the State had acted like a private party; the fact that the goods were destined for military use, or that contract was said to form part of bilateral defense cooperation between the two governments, did not alter the private-law nature of the transaction.

Although jurisdictional immunity governed the merits, the State also invoked enforcement immunity to dispute the court's local jurisdiction, which rested on the land the State owns in the district (the asset-based venue under Section 1062 ZPO). As a matter of general international law, enforcement against a foreign State's assets is barred where those assets are dedicated to sovereign purposes (*Zweckbestimmung*) and such property is placed beyond the reach of execution. This protection does not require the asset to be already in actual sovereign use; it is enough that a competent organ of the State attests a sovereign dedication. On the facts, the court ruled that the planned offices for "economic" and "technical cooperation" on the plots of land in question were not by their nature a sovereign activity and were not comparable to the representation of culture and science abroad; the State had also failed adequately to attest a sovereign dedication of the land. The Federal Foreign Office had moreover noted that exercising sovereign functions on German soil would require Germany's consent, which the State had not obtained. The court therefore found no enforcement immunity, and the asset-based venue—and with it German jurisdiction—held.

Security for Costs

The court confirmed that the rules on security for costs (*cautio iudicatum solvi*, Section 110 of the German Code of Civil Procedure (ZPO)) apply by analogy to proceedings for a declaration of enforceability of an arbitral award, and that, following Brexit, a claimant seated in the United Kingdom is in principle no longer relieved of the obligation as an EU/European Economic Area party.

That said, the court concluded that the claimant was nonetheless exempt under the exception in Section 110(2) No. 2 ZPO, because an international treaty—the German-British Convention of 14 July 1960 on the reciprocal recognition and enforcement of judgments in civil and commercial matters—secures the enforcement of any cost order in the claimant's home State. Notably, the court treated

this as independent of Brexit. That is because the EU regime (the 1968 Brussels Convention and the Brussels I and Brussels Ia Regulations) has always excluded arbitration from its scope, so the 1960 Convention was never superseded in arbitration-related matters and simply remained in force throughout. The court therefore did not need to resolve the disputed question whether the Convention "revived" for other civil and commercial matters after Brexit, and it rejected the argument that enforcement of the costs order had to be "beyond doubt": it suffices that enforcement is secured, and the abstract risk of divergent interpretation does not defeat a treaty that is in force and has not been terminated.

Validity of the Arbitration Agreement: Preclusion of the Objection

The State also argued that the procurement authority had lacked capacity under its domestic law to conclude an arbitration agreement without ministerial approval, rendering the clause invalid. In deciding whether the State was entitled to raise this point at the recognition stage, the court distinguished two situations:

1. *Failure to Seek Annulment at the Seat Is Not Preclusive*. The State was *not* barred from raising it merely because it had not brought set-aside proceedings against the award in Switzerland; a party does not forfeit grounds for resisting recognition simply by declining to use a (time-barred) remedy in the State of origin.
2. *Participation Without Objection Is Preclusive*. The State *was*, however, barred because it had not raised the invalidity of the arbitration agreement in the arbitration itself and had even advanced a counterclaim. While the New York Convention contains no express preclusion rule, the prohibition of contradictory conduct (*venire contra factum proprium*)—rooted in good faith and recognized as a principle inherent in the Convention—applies. By bringing a counterclaim, the State signaled that it treated the arbitration agreement as binding and would not later contest it before national courts; it thereby deprived the tribunal of the opportunity to rule on its own jurisdiction and deprived the claimant of the chance to resort to the national courts instead. The objection could not be revived

at the recognition and enforcement stage, and barring it did not offend international public policy (*ordre public international*).

Practical Takeaways

The decision is a robust signal to award creditors that German courts will not allow sovereign respondents to escape recognition through immunity arguments where the underlying transaction is commercial in nature—even in the sensitive field of defense procurement.

- *The Character of Transaction Determines State Immunity*. Counterparties contracting with States or State entities should not assume that a connection to defense, security, or other sovereign functions automatically confers immunity; what matters is whether the State acted like a private party. Conversely, a State seeking to preserve immunity from execution over its assets must be prepared to demonstrate a genuine sovereign dedication of the asset and, where relevant, to obtain host-State consent for any sovereign use.
- *Raise Jurisdictional Objections in the Arbitration or Forfeit Them*. A respondent that intends to contest the existence or validity of an arbitration agreement must do so within the arbitration itself. Participating in arbitral proceedings without challenging jurisdiction—and especially counterclaiming—will, as a rule, preclude the objection at the recognition and enforcement stage. This is a powerful tool for award creditors and a trap for respondents that participate without reserving the point, since failure to raise it may forfeit the objection.
- *Security for Costs Is Unlikely for UK-Seated Claimants Enforcing Awards*. The court held that the 1960 German-British Convention applies to arbitration-related recognition and enforcement applications regardless of Brexit, since arbitration was always carved out of the EU regime. UK-seated award creditors enforcing in Germany can therefore expect, as a rule, not to be required to post security for costs.

The ruling consolidates Germany's standing as a reliable forum for the enforcement of arbitral awards, including against sovereign debtors, and rewards parties that conduct their arbitrations consistently and in good faith.

Notes

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Japan Blocks Foreign Acquisition on National Security Grounds, Signaling Increased Scrutiny

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In this article, the authors discuss the decision by Japan to block the acquisition of Makino Milling Machine Co., Ltd., by a South Korea–based private equity firm.

On 30 April 2026, the South Korea–based private equity firm MBK Partners announced it had ended its effort to acquire the Japanese machine tool manufacturer Makino Milling Machine Co., Ltd., after the Japanese government issued a rare recommendation against the transaction based on national security concerns.[1]

Founded in 1937, Makino is a leading global manufacturer of high-precision machine tools and machining systems. Its principal business lines include the manufacturing of machining centers, electrical discharge machining systems, mill machines, automation systems, and computer-aided design/computer-aided manufacturing solutions.[2] One of its main products is the five-axis machining center,[3] which can be used to produce missile guidance fins and nose cones, automobile molds and dies, home appliances, semiconductors, rocket components, and medical devices.[4]

Under the proposed transaction, Makino was to become a wholly owned subsidiary under one of MBK's funds, constituting an inward direct investment that triggered the prior notification filing requirements under the Foreign Exchange and Foreign Trade Act (FEFTA), Japan's foreign investment control statute.[5] Under FEFTA, certain foreign investments, such as those deemed related to national security or involving target companies engaged in a "core business sector,"[6] trigger a prior notification filing requirement with the Ministry of Finance and the relevant ministries with responsibility for the specific sectors(s).[7] This is followed by a

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30-day review period by the Ministry of Finance. If the Ministry of Finance and any applicable ministry issues a recommendation at the end of the review period, the investor has 10 days to comply with the recommendation. If the investor fails to respond or to comply with the recommendation within such period, a formal order is issued requiring modification or suspension of the transaction.[8]

Following its review of MBK's proposed acquisition of Makino, on 22 April 2026, the Japanese government (in this case, the Ministry of Finance and the Ministry of Economy, Trade, and Industry) issued a recommendation against approving the transaction. According to the Minister of Finance Katayama, MBK's proposed acquisition posed "potential risks to national security," as Makino operates in a "dual-use technology" sector by manufacturing high-precision machine tools and machining systems.[9] Under FEFTA, "dual-use technology" refers to technology with both civilian and various military applications and purposes.[10] Machine tools falling within certain categories are commonly regarded as strategically sensitive technologies under FEFTA and as an integral part of Japan's defense supply chain and national security system. MBK subsequently announced the fund was pulling out of the transaction.

This is only the second time that the Japanese government has blocked a foreign acquisition, after it previously blocked a UK investment fund from increasing its investment in J-POWER, a Japanese power company holding key infrastructure assets, in 2008.[11] Notably, MBK's proposed acquisition of Makino had already obtained approval from the Committee on Foreign Investment in the United States (CFIUS), which was necessitated by Makino operating a manufacturing facility in Ohio.[12]

Japan's Increasing Regulatory Scrutiny of Foreign Investments and Proposed Amendments to FEFTA

The Japanese government's decision to block the acquisition of Makino is the latest example of its efforts to increase scrutiny of foreign investment in Japan.

Under FEFTA, a foreign investor is generally required to submit a prior notification to the Japanese government and obtain approval

if the target company is engaged in business sectors relating to national security, public order or safety, or critical infrastructure, such as defense, aerospace, cybersecurity, telecommunications, energy, semiconductors, dual-use technologies, and other industries deemed sensitive by the Japanese government.[13] The factors that the government considers are largely set out in administrative guidance and policy materials published by the Ministry of Finance and are not codified in law, granting the government considerable discretion in carrying out its review.

Recent legislation has expanded the scope of FEFTA. In 2019, the share acquisition/ownership threshold for triggering the prior notification requirement was lowered from 10 percent to 1 percent, and new types of activities were added that trigger the prior notification requirement such as the appointment of a foreign investor or its "close associate"[14] as a director or statutory auditor of a Japanese company.[15]

Additional legislation is set to further strengthen FEFTA. On 17 March 2026, the Japanese Cabinet approved and submitted to the Diet (the Japanese legislative body) a bill to overhaul and expand the scope of FEFTA by:[16]

- Introducing a formal inter-agency screening committee reportedly to be co-chaired by the Ministry of Finance and the National Security Secretariat;[17]
- Covering certain indirect acquisitions, including offshore-to-offshore transactions involving Japanese subsidiaries and changes in ultimate ownership or control;
- Codifying "risk mitigation measures" that are currently implemented largely through administrative guidance (such measure to include governance restrictions, information barriers, limitations on access to sensitive technology, and other post-closing compliance obligations);
- Introducing post-closing "call-in" powers to allow Japanese authorities to review and impose remedies on transactions even after completion, including transactions not initially subject to prior notification requirements; and
- Strengthening anti-circumvention measures through a broader interpretation of "deemed foreign investors," and increased focus on effective control and beneficial ownership.

The bill was passed by the Diet on 29 May 2026. After regulations implementing the FEFTA reforms are promulgated, they will come into force around mid-2027.

Practical Applications for Foreign Investment Into Japan

Japan's opposition to the Makino acquisition and the proposed FEFTA amendments reflect a policy shift toward a more robust security-oriented foreign investment screening process similar to the U.S. CFIUS framework, heightening risks for foreign investment in Japanese companies involved in sensitive manufacturing capabilities and dual-use technologies with potential national security implications.

The expected FEFTA reform would further broaden the scope of transactions requiring FEFTA analysis, and reviews are expected to become increasingly subject to economic security and geopolitical considerations. The Makino decision demonstrates that approval under traditionally more rigorous regimes in other jurisdictions, such as CFIUS in the United States, does not necessarily signal a likely approval under FEFTA.

In general, foreign parties investing in Japan should expect heightened scrutiny, longer review timelines, and increased regulatory uncertainty, as well as greater reliance on mitigation measures such as governance restrictions, information barriers, and ongoing compliance obligations. For private equity investors, FEFTA reform places greater emphasis on scrutiny of indirect acquisitions, transparency in relation to ultimate beneficial ownership, and effective control, thereby increasing scrutiny over consortium structures, layered holding companies, and beneficial ownership arrangements.[18]

In this environment, a thorough risk assessment before moving forward with an investment likely to attract attention under FEFTA will become more essential than ever.

In Summary

- Japan has blocked the acquisition of a Japanese company by a South Korea–based private equity fund under the FEFTA based on perceived national security risks.

- This is only the second time ever that Japan has blocked a transaction under FEFTA, which is expected to be amended to bring Japan's review process closer to that employed by the United States under CFIUS.[19]
- Japan's actions are the latest sign of its increasing scrutiny of foreign investment, especially transactions involving semiconductors, artificial intelligence, defense, advanced manufacturing, cybersecurity, and critical infrastructure.
- Private equity investors will likely face increased review of consortium structures, indirect investments, and ultimate ownership arrangements.

Notes

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