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# **The New UK Foreign Investment Regime – “The Biggest Shake-up in 20 Years”**

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## ***What is new?***

Yesterday, the UK government published an [open letter](#) to businesses providing more clarity on its upcoming national security and investment regime. The new legal framework, which the UK government calls “the biggest shake-up in 20 years of the UK’s system for screening investments”, will come into force on 4 January 2022. Nevertheless, yesterday’s letter also reassures investors that the UK continues to welcome foreign investment and states that the regime is aimed to block “only a small minority of acquisitions” that pose a potential risk to the UK.

This follows a previous [update](#) from 15 November 2021 providing a new set of guidance, which complements draft statutory instruments and guidance notes published earlier this year, and consists of: (i) guidance on notifiable acquisitions which provides further clarity on the economic sectors covered by the regime; and (ii) practical information on how to prepare for the new rules and guidance on the notification and review processes. The entire collection of relevant guidance documents is available [here](#).

## ***What is covered?***

The new regime which is established by the National Security and Investment Act 2021 (the “*NSI Act*”) provides the UK government with wide powers to scrutinise transactions that may pose a risk to the UK’s national security.

The new regime focuses on the impact of transactions in 17 key sectors of the UK economy which include industries not traditionally subject to heavy FDI scrutiny, ranging from artificial intelligence and data infrastructure to communications and transport.

## ***Enforcement powers***

The NSI Act focuses on acquisitions and consolidations of “control” where the threshold is set as low as 25%. Moreover, the UK government will also be able to call-in acquisitions of shareholdings below this threshold if the acquirer obtains “material influence” over the target (similar to material influence under the UK merger control regime). It should be noted that there are no *de minimis* thresholds in relation to the value of the transaction, so the expectation is that the new regime will not only cover high-profile or high-value deals.

If the transaction falls within any of the 17 sectors, a mandatory notification may be needed. Parties will also have to consider voluntary notifications for certain acquisitions given that the UK government will have “call-in” powers to scrutinise deals outside the 17 key sectors identified.

Notifications under the new regime will be reviewed by the recently established Investment Security Unit (“*ISU*”) within the Department for Business, Energy & Industrial Strategy (“*BEIS*”). The ultimate decision maker will be the Secretary of State for BEIS. The ISU is already operational and can be contacted for informal consultation at [investment.screening@beis.gov.uk](mailto:investment.screening@beis.gov.uk).

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Having reviewed the transaction, the UK government will be able to block it (or approve it subject to conditions) if it believes that it poses a risk to national security. If the transaction has already been completed, the NSI Act provides for the option to unwind it.

## ***How long is it going to take?***

Each notification made to the ISU will be reviewed within 30 working days. If, following that initial review, the transaction is called in for a more detailed national security assessment, the ISU will have another 30 working days to complete the assessment (which could be extended by another 45 working days in certain circumstances). However, dealmakers should also account for “pre-notification” discussions, which could vary significantly depending on the nature of the transaction and the parties involved.

## ***When is it starting?***

Although the NSI Act will come into force on 4 January 2022, the UK government’s call-in power extends to any deal which has closed since 12 November 2020 and may give rise to national security concerns. The call-in power is subject to certain time limits: either up to six months after the commencement of the NSI Act, or up to six months after the date on which the UK government becomes aware of the transaction (whichever is later). The latter period has a “longstop” date, namely it is limited to five years after completion of the transaction.

## ***Implications and outlook***

The introduction of the NSI Act in the UK is part of a global trend towards tighter control of foreign investment (as is the case in other jurisdictions, such as the US and across Europe). The UK regime is expected to be quite robust and similar in effectiveness to the US CFIUS review framework.

The sanctions for non-compliance with the NSI Act include financial penalties of up to 5% of annual worldwide turnover (or up to £10 million, whichever is greater) and also criminal liability (imprisonment of up to 5 years). With that in mind, companies and investors, even those with a limited UK presence, will need to be aware of the new rules and factor them into their acquisition strategies.

Dealmakers should already be taking account of the new UK regime in any current negotiations and should be carrying out the necessary analysis to determine whether their transaction could be potentially caught by the NSI Act. As of 4 January 2022, when the NSI Act comes into force, investors should be prepared to make a mandatory notification (if required), consider a voluntary notification, or consider the risks under the UK government’s call-in powers, and account for the review process in the overall timeline of their transaction.

In cases triggering the mandatory notification requirement, completion of the deal will be subject to obtaining clearance and approaching the ISU at an early stage would be highly recommended.

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