



## The long-awaited NSIA is now in full force

On 4 January 2022, the National Security and Investment Act 2021 ("**NSIA**") came into full operation, which in the UK Government's own words represents the biggest shake up in the UK's foreign investment screening powers for 20 years.<sup>1</sup> The NSIA creates for the first time ever a new standalone screening regime. A new agency called the Investment Security Unit ("**ISU**") which sits in the Department for Business, Energy and Industrial Strategy ("**BEIS**") will enforce the NSIA, but the Secretary of State will be the ultimate decision-maker.

What companies critically need to know about the NSIA is briefly set out below. A more in-depth analysis of the key features of the new regime and main considerations for investors and businesses can be found [here](#).<sup>2</sup>

- New Mandatory Notification Regime:** From 4 January 2022, parties will need to make a mandatory filing if their transaction involves an acquisition of more than 25%, 50% or 75% of shares / voting rights in entities (including a company, LLP, any other body corporate, a partnership, an unincorporated association or a trust) in any of 17 specific sensitive sectors.<sup>3</sup> Lower thresholds may apply depending on the voting rights attached to the acquired shares. Parties will need to obtain clearance first from BEIS before they can close the deal or face significant consequences (see below).
- Voluntary Regime:** From 4 January 2022, parties may also make voluntary notifications in respect of any acquisitions of shares, voting rights and / or assets falling outside of the 17 sensitive sectors, if such deals could give rise to a potential national security concern. Importantly, the voluntary regime applies to acquisitions of assets (e.g. IP, land, physical property) and not just shares / voting rights.
- The trigger events are the same as under the mandatory regime, but also capture acquisitions of less than 25% where there is "material influence". This latter concept captures any level of shareholding that allows the acquirer to materially influence the target's conduct (e.g. 10% + shareholding with special rights attached, board representation, veto rights over key strategic matters, voting patterns, etc.).
- Retrospective "Call-In" Powers:** From 4 January 2022, BEIS has the power to "call-in" deals for an in-depth review where it reasonably suspects that they give rise to a national security risk; calling-in deals retrospectively that were entered into or closed after 12 November 2020. BEIS' "call-in" power is subject to a 5-year limitation period, which may be reduced to 6 months once BEIS becomes aware of the deal.
- Significant Penalties:** Failure to make a mandatory filing when required can result in significant consequences for the parties,

<sup>1</sup> See <https://www.gov.uk/government/speeches/new-national-security-regime-from-4-january-2022>

<sup>2</sup> Stephenson Harwood's previous briefings on the NSIA can be found at: [D-day announced – UK's new National Security and Investment Act regime to begin on 4 January 2022 \(shlegal.com\)](#), [UK Government provides more clarity on the scope of the National Security and Investment Bill \("NSIB"\) \(shlegal.com\)](#), and [The UK introduces audacious new National Security and Investment Bill \(shlegal.com\)](#).

<sup>3</sup> These include: (i) advanced materials, (ii) advanced robotics, (iii) artificial intelligence, (iv) civil nuclear, (v) communications, (vi) computing hardware, (vii) critical suppliers to Government, (viii) cryptographic authentication; (ix) data infrastructure; (x) defence; (xi) energy, (xii) military and dual-use; (xiii) quantum technologies; (xiv) satellite and space technologies; (xv) suppliers to the emergency services; (xvi) synthetic biology; and (xvii) transport.

including fines of up to 5% of a company's worldwide turnover or £10 million (whichever is the higher) and individual criminal sanctions of up to 5 years imprisonment. Transactions will also be automatically void and unenforceable.

- **No Safe Harbours:** There are no *de minimis* financial, transaction value or other market share thresholds. The NSIA can even apply to intra-group deals.
- **Broad Extraterritorial Scope:** It applies to UK and non-UK investors as well as to investments in UK entities/assets or foreign entities/assets that have some UK nexus (i.e., carry on activities in (or partly in) the UK or supply goods or services to persons based in the UK).
- **Outcomes:** BEIS has broad powers, including the power to either clear, impose conditions on, or unwind or block a transaction to address any national security concerns. Indeed, BEIS also has the power to impose hold separate orders on parties to prevent businesses from integrating whilst it conducts its review.
- **Consideration Process:** BEIS has indicated that it will assess transactions swiftly and, technically, parties could get a clearance within 30 working days, but the approval process could also extend to 105 working days or more. Moreover, BEIS can "stop the clock" during its more in-depth "assessment period". If a deal is not cleared during the initial "review period" of 30 working days, parties need to factor the contingency of a potentially long-winded review (and the risk that the clock might be stopped) into a deal's timetable and feasibility.

The new NSIA regime will inevitably be a further hurdle for dealmakers to jump. It is therefore important for investors to consider the impact of the NSIA on their transactions and undertake an NSIA analysis early on in the deal process (in much the same way as a merger control assessment). The UK Government has stressed repeatedly that the intention of the NSIA is not to deter investment into the UK (so long as it is deemed to be "friendly") and that both domestic and foreign investment remains critical for the UK economy. Whether or not a far more stringent investment screening regime under the NSIA can be reconciled with continually high levels of investment into the UK remains to be seen.

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