THE UK NATIONAL SECURITY AND INVESTMENT ACT: WHO, WHAT, WHERE, WHEN, WHY?

Date: 30 July 2021

UK Policy and Regulatory Alert

By: Jennifer P.M. Marsh, Gabriela da Costa, Niall J. Lavery

In November 2020 the UK Government announced[1] a new, much broader regime for the regulation of foreign investment for the protection of national security in the United Kingdom (the UK) under the National Security and Investment Act (the Act).[2] The UK government has now confirmed that it expects the regime to come into force on 4 January 2022 and many transactions will trigger mandatory notifications from that date or risk fines and invalid transactions.

Alongside commencement information, the recent guidance publications shed light on what transactions will be caught and how the Secretary of State expects to use the new powers. The updated guidance pages[3] answer the following questions:

WHEN WILL THE ACT COME INTO FORCE?

The new regime will commence in its entirety on 4 January 2022.

The Act grants the UK Government a five-year retrospective call-in power for transactions which were not notified, but may give rise to national security concerns. These powers will be applicable for all transactions that took place from 11 November 2020 onwards (the date that the Act was introduced to Parliament). This means that the provisions of the Act should be an active consideration for parties to transactions happening now, whether they are likely to complete before 4 January 2022 and potentially be “called in” retrospectively or whether they may not complete until after commencement and may therefore trigger a mandatory notification.

WHAT KIND OF TRANSACTIONS WILL FALL WITHIN THE SCOPE OF THE ACT?

A transaction will be a 'qualifying acquisition' regardless of the deal value if it satisfies all of the following.

1. The acquisition is of a right or interest in, or in relation to, a qualifying asset (i.e. land, tangible movable property, or intellectual property) or entity (i.e. a company, an LLP, a partnership, an unincorporated association, a trust, or any other body corporate),
2. The entity or asset being acquired is from, in, or has a connection to the UK, and
3. The level of control being acquired meets one of the defined thresholds (for example, voting rights in a qualifying entity will become more than 25 percent).

An acquisition of a qualifying entity (as opposed to an asset acquisition) triggers a mandatory notification if it relates to any of the 17 stipulated sectors of the UK economy, as follows:

©2005-2026 K&L Gates LLP. All Rights Reserved.

4. Advanced Materials
5. Advanced Robotics
6. Artificial Intelligence
7. Civil Nuclear
8. Communications
9. Computing Hardware
10. Critical Suppliers to Government
11. Cryptographic Authentication
12. Data Infrastructure
13. Defence
14. Energy
15. Military and Dual-Use
16. Quantum Technologies
17. Satellite and Space Technologies
18. Suppliers to the Emergency Services
19. Synthetic Biology
20. Transport

Even where no mandatory notification is triggered because the transaction is structured as an asset acquisition or does not directly fall within these sectors, the UK Government may “call in” the transaction if it believes it gives rise to, or may give rise to, a risk to national security. The parties may pre-empt this by voluntarily notifying the authorities of the transaction.

DOES IT MATTER WHERE THE PARTIES TO THE TRANSACTION ARE LOCATED?

The Act is expected to catch a significant number of transactions taking place outside the UK. The only geographical limitation of the Act's scope is that the qualifying entity or asset is from, in, or connected to the UK. For these purposes, a connection will be found if a business carries on activities or has customers in the UK, or if an asset is used in connection with activities or supply of goods and services in the UK.

This means it is entirely possible for target groups with no UK subsidiaries to fall within the scope of the Act. Furthermore, the nationality of the acquirer is irrelevant when determining whether there is an obligation to file. There are no exemptions for “allied” jurisdictions, although this will be relevant to the substantive assessment.

©2005-2026 K&L Gates LLP. All Rights Reserved.

HOW DOES THE SECRETARY OF STATE PLAN TO USE THE ENHANCED POWERS?

The review process under the Act will fall within the powers of the Secretary of State for Business, Energy and Industrial Strategy (BEIS), and will be overseen by a new department within BEIS called the Investment Security Unit (the ISU). The ISU is available now and receiving and responding to informal submissions regarding transactions which may be caught by the Act, retrospectively.

After commencement, the deadline for the ISU review process will be 30 working days from the receipt of all necessary information, with the expectation that many reviews will be concluded more quickly. At the end of this period, the ISU will confirm whether it is satisfied that it need take no further action, or that further investigation (lasting between a further 30 and 75 working days) is required. This legally defined timeframe is intended to offer an improved degree of certainty to transaction timelines when compared with the previous UK rules. No filing fees are payable.

At the end of the ISU review, the ISU may: a) clear the acquisition, b) impose conditions on the acquisition, or c) unwind or block the acquisition. The ISU has confirmed it expects to impose conditions in a minority of cases and to resort to unwinding or blocking transactions in even more exceptional circumstances.

WHAT ARE THE CONSEQUENCES OF NON-COMPLIANCE?

When a 'notifiable acquisition' (i.e. a qualifying acquisition of a qualifying entity in one of the 17 defined sectors) is completed without ISU approval, it is considered void under English law. Additionally, the acquirer may be subject to civil or criminal penalties including a civil penalty of up to 5 percent of the organisation's global turnover or £10 million, whichever is greater.

Parties will be able to apply for retrospective validation, a tool that may be particularly useful for relevant transactions that have already completed since 11 November 2020.

WHY IS THE UK MAKING THESE CHANGES?

In keeping with other regimes, for example in the European Union, the UK is seeking to modernise and protect a much broader set of national security interests, such as critical supplies to government and data infrastructure, from passive as well as active investment interference. However, in establishing a clear and efficient review process, the hope is that the majority of desirable foreign investment will not be deterred.

"*Protecting the UK's national security is of paramount importance to this government," Secretary of State for BEIS Kwasi Kwarteng said. "Now that our investment screening regime has been strengthened, the government will be able to take swift and decisive action against potentially hostile foreign investment.*"

FOOTNOTES

[1] "New and improved National Security and Investment Act set to be up and running"

[2] See our previous alert here.

©2005-2026 K&L Gates LLP. All Rights Reserved.

[3] "National Security and Investment Act"

[4] Specifically, the ISU is expecting to receive 1,000-1,830 notifications each year. It is expecting to call in a further 75-90 deals per year. However, the ISU anticipates that it will require remedies in only around 10 deals per year.

KEY CONTACTS



JENNIFER P.M. MARSH
PARTNER

LONDON
+44.20.7360.8223
JENNIFER.MARSH@KLGATES.COM



GABRIELA DA COSTA
PARTNER

LONDON
+44.20.7360.8115
GABRIELA.DACOSTA@KLGATES.COM



NIALL J. LAVERY
SENIOR ASSOCIATE

LONDON
+44.20.7360.6443
NIALL.LAVERY@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.