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UK Government Publishes First Annual Report on New UK National Security & Investment Regime

Since the UK's [National Security and Investment Act](#) (NSIA) came into force on 4 January 2022, the UK government is now able to scrutinise and intervene in certain acquisitions made by investors that could harm the UK's 'national security'. The NSIA allows the UK government to impose certain conditions on an acquisition or, if necessary, unwind or block it.

This has introduced significant new risks into the broader M&A process because the new regime provides for potentially lengthy timelines, allows for both 'mandatory' and 'voluntary' filings, is extra-jurisdictional and retrospective, includes civil and criminal penalties for non-compliance, renders non-notified transactions void where they ought to have been notified, and applies whether or not the UK merger control regime is triggered.

However, since the NSIA was adopted, the UK government has sought to reassure investors that while the Act may be far-reaching, it expects to use these new powers rarely, and the vast majority of deals will therefore be able to proceed without delay. Advisors have also found the relevant UK government staff co-ordinating the notification process on a day-to-day basis to be helpful and open to providing case-specific guidance upon request.

In June 2022, the UK government released its first [annual report](#) on the NSIA, which provided details on the number of filings and other related activities that have occurred under the Act since it came into force. The annual report only covers the period from 4 January 2022 to 31 March 2022, so any trend analysis is very limited at this stage.

Introduction to the NSIA

The new regime only applies to transactions in the following [17 'sensitive' sectors](#), though 'national security' remains deliberately undefined:

Advanced materials	Critical suppliers to government	Quantum technologies
Advanced robotics	Cryptographic authentication	Satellite and space technology
Artificial intelligence	Data infrastructure	Suppliers to the emergency services
Civil nuclear	Defence	Synthetic biology
Communications	Energy	Transport
Computing hardware	Military and dual-use	

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The UK regime has no financial thresholds for notification and does not include a de minimis exemption. Although some might refer to it as a 'foreign' investment regime, it applies to acquisitions by UK investors as well as those by foreign investors.

UK and foreign parties acquiring a 'qualifying entity' (any entity other than an individual, including a company, a limited liability partnership, any other body corporate, a partnership, an unincorporated association, and a trust) associated with one of the 17 sensitive areas must notify the UK government of the acquisition. Mandatory notifications are triggered when the acquirer's shareholding stake or voting rights increase: (1) from 25% or less to more than 25%; (2) from 50% or less to more than 50%; and (3) from 75% or less to 75% or more. That is, transactions need not lead to the acquisition of majority control of the target and may even involve the mere acquisition of 'material influence' over the target (i.e. the same low threshold below 25% used in UK merger control law). Asset acquisitions can also be 'called in' by the UK government for an in-depth review.

There is no legal requirement to notify the UK government about acquisitions which do not trigger a mandatory notification. However, businesses can submit a 'voluntary notification' if they believe the UK government might be interested in an acquisition due to its national security implications and therefore might commence an investigation after closing.

The regime is [extra-jurisdictional](#), covering foreign entities which 'carry on' activities in the UK or supply goods or services to people in the UK. To determine whether global transactions may be subject to the NSIA regime, investors will need to consider whether entities 'formed or recognised under the law of a country or territory outside the UK' are 'sufficiently involved' in carrying on activities in the UK, or supplying goods or services to a 'recipient' in the UK. Goods passing through the UK to other destinations may also be relevant for NSIA purposes, depending on the circumstances.

The regime is retrospective, meaning all acquisitions completed on or after 12 November 2020¹ can be 'called in' and scrutinised by the UK government if they have not been notified and the UK government 'reasonably suspects' that they may give rise to a national security risk. The UK government can assess acquisitions up to five years after they have taken place and up to six months after becoming aware of them if they have not been notified.

Following notification to the UK government using specified 'mandatory', 'voluntary', or 'retrospective' forms, via a dedicated online IT portal, deals are either cleared within 30 working days or less or called in, meaning a further in-depth investigation is initiated, lasting 30 working days, subject to a further extension of 45 working days.

Unnotified transactions covered under the new legislation are considered 'void' until they are notified to the UK government or called in and a decision is rendered by the UK government.

There are significant civil and criminal penalties for non-compliance by individuals and companies, including up to five years in jail and fines of up to 5% of total global turnover.

The final outcomes of the process may include: (1) no national security issues emerge, allowing the transaction to proceed unhindered; (2) certain national security issues are identified, but the UK government allows the transaction to proceed, as long as the parties agree to specific measures to mitigate the applicable national security risks; and (3) the UK government blocks the transaction due to the national security risks that the parties are either unwilling or unable to mitigate.

¹ There is a theoretical risk of retrospective call-in for investments which closed between 12 November 2020 and the NSIA's commencement on 4 January 2022 (for six months thereafter). In practice, this risk is likely to be very low for most investments. However, the first annual report stated that in the period it covered, the UK government had accepted one retrospective validation application, clearly demonstrating that this aspect of the NSIA needs to be taken into account in practice.

The new UK regime is similar in some ways to the EU's foreign direct investment (FDI) review process, co-ordinated by the European Commission, and shares similarities with the mandatory filing regime first implemented by the Committee for Foreign Investment in the United States (CFIUS) in 2018.

Key Findings of the Annual Report

The UK government received [222 deal notifications](#) in the three-month period from 4 January to 31 March 2022.

- Of these, 196 were mandatory notifications, 25 were voluntary notifications, and one application was retrospective for a deal that occurred on or after 12 November 2020, but before 4 January 2021.
- Of these deals, 17 were called in by the UK government for further assessment.
- Of the 17 called in, three were cleared, with the other 14 cases still being assessed at the end of the reporting period.
- Acquisitions called in for further assessment included businesses from areas of the economy involving 'cutting-edge technology,' such as artificial intelligence, advanced materials, and satellite and space technologies.

The annual report breaks down the industrial sectors in which deals were notified to the UK government and called in for a further review of 30 working days. No deals were called in during January, but nine were in February and eight in March. Of the 17 deals called in, 13 related to mandatory notifications and four to voluntary notifications. Of those cases called in for further review, none were subject to a further extension of 45 working days (the 'additional period').

Tables 1 and 2 break down those figures by industrial sector:²

Table 1: Areas Associated with Called-In Mandatory Notifications

Areas of the economy	Number of call-ins associated with area
Military and Dual Use	7
Critical Suppliers to Government	6
Defence	6
Data Infrastructure	4
Advanced Materials	2
Artificial Intelligence	2
Critical Suppliers to Emergency Services	2
Civil Nuclear	1
Computing Hardware	1
Cryptographic Authentication	1
Satellite and Space Technology	1

² Each notification can be associated with more than one area, hence the total number of notifications associated with each area is higher than the total number of notifications.

Table 2: Areas of the Economy Associated with Called-In Voluntary Notifications

Areas of the economy	Number of call-ins associated with area
Academic Research and Development in Higher Education	1
Advanced Materials	1
Computing Hardware	1
Energy	1
Professional, Scientific, and Technical Activities	1

Analysis & Implications

Notifying parties appear to have responded to the NSIA's introduction by taking a prudent and cautious approach, making 222 notifications, which is a significant number, in a relatively short period.

The annual report clearly indicates that notifying parties have used each of the three available tracks (mandatory/voluntary/retrospective), demonstrating that each remains a live possibility, depending on the deal structure.

The annual report emphasises that incomplete notifications may be rejected. Seven mandatory notifications and one voluntary one were rejected. Rejected notifications need to be re-submitted before the acquisition can be completed, potentially lengthening the transaction timeline. This underlines the need to complete the notifications as fully and accurately as possible at the outset.

References to co-operation with international partners, such as CFIUS, or the EU's screening mechanism for FDI underline the need to take a global view to co-ordinating such regulatory approvals. The authorities may also discuss cases amongst themselves, meaning that consistent presentations are required in all submissions.

NSIA / CFIUS / EU FDI Screening Risk Management

Parties, notably private equity firms, should consider steps to improve their management of NSIA, CFIUS, and EU FDI screening risks when identifying or entering into certain investments, such as:

- Integrating the process for determining if a transaction is covered by either regime into the overall due diligence process.
- Determining if a transaction is covered by either regime early in the transaction in order to identify the overall risk present and to establish an appropriate timeframe for any necessary filings.
- Modifying transactions to minimise NSIA, CFIUS, or EU FDI screening risks by, for example, avoiding certain board rights or information access rights by limited partners or co-investors.
- Carefully scrutinising large-percentage investments by state-owned entities when the U.S., UK, or EU investment target is active in certain high-risk sectors, such as advanced technology or sensitive personal data.

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