

Insights

ACT ON IT – THE NATIONAL SECURITY AND INVESTMENT ACT 2021

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SUMMARY

The UK's long-awaited National Security and Investment Act passed into law on 29 April 2021 when it received Royal Assent. Secondary legislation will follow and the regime is expected to be fully in force towards the end of the year. Here is what you need to know...

The National Security and Investment Act 2021:

The UK's long-awaited National Security and Investment Act passed into law on 29 April 2021 when it received Royal Assent. Secondary legislation will follow and the regime is expected to be fully in force towards the end of the year. Although the Act is not live yet, investors should already be considering its possible impacts on deals because of the retrospective effect of the legislation, the Secretary of State's broad powers under it to "call-in" non-notified transactions for review, and the sanctions for non-compliance (for more detail on this, see our earlier blog post '[UK National Security & Investment Bill introduces mandatory Government review of a wide range of transactions](#)').

Dealmakers should also remember that the regime does not only govern foreign investment, since the Act applies to both UK and non-UK investors, and that the definitions of the sensitive Key Sectors (which dictate the scope of the mandatory notification regime) are very broad in places and so may capture some unexpected transactions.

What has changed?

The National Security and Investment Bill was introduced to parliament in November last year. There are not many differences between the Bill as introduced and the Act as it stands. However, a significant change, is that the threshold for notification of deals in the 17 Key Sectors has been adapted slightly – under the Act, acquisitions of shares/voting rights of over 25% can trigger the notification requirement. The minimum threshold under the Bill was originally 15%. However, acquisitions of stakes lower than 25% which enable the person to secure or prevent the passage of any class of resolution governing the affairs of an entity can still be caught by the mandatory

regime. Transactions which enable a person to “materially to influence” the policy of an entity can also be “called-in” for review where the deal raises national security concerns.

The proposed definitions of the Key Sectors were also refined in March this year, following a public consultation. Although the headline sectors have not changed, a number of the definitions have been adapted with the aim of providing further clarity to investors.

What is next?

Secondary legislation and further guidance on the Act is expected to be published later this year. Notably, the Government’s draft Statement of Policy Intent needs to be finalised, as do the definitions of the Key Sectors and the forms that will be used to notify deals.

The Government has indicated it will be working “hand in glove” with investors and businesses to help them understand the Government’s new powers. Special attention will be focussed on those active in the 17 Key Sectors. A new Investment Council will also be created which will act as an advisory body to the Government with the aim of improving and enhancing the environment for foreign investors.

BCLP’s Antitrust & Competition team works closely with clients in various sectors in relation to the application of the new National Security and Investment regime. If you would be interested in hearing more about any aspect of the new Act and how best to prepare for its commencement, please do get in touch.

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