

The UK National Security and Investment Act – New Regime Effective on 4 January 2022

July 30, 2021

The new UK National Security and Investment Act 2021 (NSI Act) received Royal Assent on 29 April 2021 and, at the time, the UK Government indicated that further guidance regarding the scope and the effective date of the NSI Act would be issued in due course. The UK Government has recently announced that the NSI Act will come into full force on 4 January 2022. In addition, the UK Government has published a series of further [guidance notes and materials](#) related to the NSI Act. The NSI Act is a stand-alone regime granting the UK Government wide new powers to scrutinise and intervene in acquisitions and investments on grounds of national security. Once in force, it will replace the national security considerations currently contained within the Enterprise Act 2002.

Mandatory Notification

The UK Government has also now published the [Draft Statutory Instrument](#) detailing the 17 key sectors that will be subject to mandatory notification requirements once the NSI Act comes into force. Transactions that are subject to the mandatory regime and which are concluded without clearance will be void and of no legal effect.

Retrospective Effect

In Katten's previous advisory "[New UK Rules for Reviewing Foreign Direct Investment](#)", we commented on the detail of the NSI Act's retrospective effect and the trigger events that may allow the UK Government to call in a transaction that closes any time after 12 November 2020. The NSI Act allows a call-in notice to be issued up to five years following the occurrence of a trigger event, reduced to six months from the date the UK Government became aware of the trigger event (the "Call-in Period").

Investors and acquirers should note that the clock does not start running on the UK Government's Call-in Period until the coming into force of the NSI Act, regardless of whether a voluntary notification is made to the UK Government making it aware of a relevant transaction prior to such date. This means that if a trigger event in respect of a transaction occurs in 2021 and the UK Government becomes aware of such an event, it may still issue a call-in notice at any time up to 4 July 2022.

Assessment

As discussed in our previous briefings, once a call-in notice has been issued, an initial 30-working day assessment period is triggered in which the UK Government will review the transaction and impose remedies or restrictions if necessary. If there is a national security concern and further investigation is required, the review period may be unilaterally extended by an additional 45 working days (further extensions may be agreed between the parties if required). It is therefore possible that such a review may extend beyond the Call-in Period, adding more uncertainty for investors with respect to the timing for closing of transactions. However, the UK Government has stated that it would expect most transactions to be assessed within the initial 30-working day assessment period and often more quickly.

Implications

The deal community now has greater certainty with respect to the commencement of the NSI Act. Sellers, buyers and investors should include consideration of national security concerns as part of their due diligence and deal management, particularly if there is a risk a transaction may be deemed in scope of the mandatory regime. Once the NSI Act fully commences, investors planning an acquisition in one of the defined sensitive areas of the UK economy will need to ensure that completion is conditional upon obtaining approval from the UK Government or the expiry of the relevant notice period.

It is not yet clear how the notification process will work in practice; however, further guidance is expected in autumn 2021. In the meantime, the UK Government has produced a set of [Draft Questions for a National Security and Investment Notification](#) to aid investors in making an assessment of their transaction.

CONTACTS

For more information on the NSI Act, contact your Katten relationship lawyer or the author listed below.



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