

UK's National Security and Investment Bill Becomes Law

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Following our prior client alerts regarding the U.K. government's proposals for a new investment screening regime ("[UK Government Introduces New Regime for Screening Foreign Direct Investment](#)" on November 11, 2020, and "[UK Government Provides Greater Clarity on New National Security Screening Rules](#)" on March 9, 2021), the U.K.'s National Security and Investment Bill received Royal Assent on April 29, 2021, and has formally become an Act of Parliament (the Act).

While the new regime provided for under the Act will not commence until later in 2021, passage of the Act represents a significant milestone in the reform of the U.K.'s approach to inward investment. The Act will significantly enhance the U.K. government's powers to scrutinise, impose conditions on and potentially block mergers, acquisitions and other transactions that might give rise to national security risks. In particular, the Act introduces a mandatory notification and approval regime for transactions affecting businesses in certain sectors of the economy that are considered sensitive to national security risks, such as artificial intelligence, civil nuclear, communications, data infrastructure, defence, energy, quantum technologies, synthetic biology and transport.

The Act will also provide the U.K. government with the power to "call in" for review transactions that have not been notified to it but that may raise national security concerns, and introduces statutory timelines for government assessment of deals. The U.K. government can exercise this "call in" power retrospectively with respect to transactions that have taken place on or after November 12, 2020.

The new regime will apply not only to acquisitions of interests in entities formed in the U.K., but also to foreign entities that carry on activities, or supply goods or services to persons, in the U.K., and to intragroup reorganisations. In addition, it will apply to acquisitions involving control of assets such as land and intellectual property, where such assets are situated in the U.K. or outside the U.K. if they are used in connection with activities carried on, or the supply of goods or services to persons, in the U.K. Significant civil and criminal penalties can be imposed for noncompliance, and transactions in the mandatory approval sectors that are completed without approval are void, though the Act does provide for a retrospective validation procedure.

Much of the new regime will be implemented by way of several statutory instruments that will provide for, among other things, a statement of intent (which the Secretary of State must consider when exercising the power to call in transactions for a formal national security assessment) and the specification of the sectors subject to mandatory notification and approval, as well as the commencement of the new regime, including any requisite transitional arrangements not provided for in the Act. The U.K. government will also publish guidance on a range of topics to assist businesses, investors and advisors in understanding and meeting the requirements of the new regime ahead of its commencement. A new Investment Security Unit will administer the new regime, and work continues to establish this unit and to ensure that it is adequately resourced to handle the large volume of enquiries it is expected to receive.

The enactment of this legislation represents a watershed moment and will bring about the biggest reorganization of the U.K.'s investment screening regime in 20 years. The U.K. government is keen to emphasize that the U.K. remains open for business and an attractive place to invest, but investors will need to ensure that they take the new regime into account in their transaction planning. In particular, parties will need to give careful consideration to its application to transactions that are currently in progress or in the course of negotiation and that may not be completed until after its commencement.