# UK Mandatory Foreign Direct Investment (FDI) Screening for Transactions in Sensitive Sectors

12 November 2020

On 11 November 2020, the UK government published the **National Security and Investment Bill** (the **NSI Bill**), which, if enacted, will significantly reform the regulation of M&A activity in the UK by introducing a new and separate review mechanism for transactions giving rise to national security concerns. The publication of the NSI Bill was foreshadowed in June 2020 with amendments to the UK merger control regime that extended the UK government's discretionary powers to intervene in transactions on grounds of national security or public interest (see our **briefing**).

In brief, key provisions of the NSI Bill (and the regime to be introduced by it) include:

- **Mandatory notification**: Filings will be required where there is an acquisition of a significant interest in a UK company or assets with activities in sensitive sectors by an overseas investor. Where filings are required, parties are prohibited from implementing the transaction, pending clearance. Between 1,000 and 1,830 notifications are expected annually, submitted to a new 100-person Investment Security Unit within the Department for Business, Energy & Industrial Strategy, with reviews overseen by the Secretary of State.
- **17 sensitive sectors**: Transactions in the following 'sensitive sectors' will require notification: Civil Nuclear; Communications; Data Infrastructure; Defence; Energy; Transport; Artificial Intelligence; Autonomous Robotics; Computing Hardware; Cryptographic Authentication; Advanced Materials; Quantum Technologies; Engineering Biology; Critical Supplier to Government; Critical Supplier to the Emergency Services; Military or Dual-Use Technologies; and Satellite and Space Technologies. Notification is voluntary for transactions in all other sectors.
- **Review timelines**: Most reviews will complete within 30 working days of notification. Where the Secretary of State issues a "call-in" notice, the government has a further 30 working days to complete the review, extendable by 45 working days and potentially longer where warranted.
- **Retrospective reviews**: The NSI Bill provides a 5-year retrospective call-in power for transactions completed from 11 November 2020 that were not notified but which may raise national security concerns.
- **Potential for remedies**: Clearance may be subject to conditions such as restrictions on access to sensitive data or limits on the amount of shares an investor is permitted to acquire. The UK government estimates only approximately 10 reviews a year will require a remedy.
- **Potential sanctions**: Non-compliance may result in fines of up to 5% of the annual global turnover of the acquirer or £10 million, whichever is greater, and up to 5 years' imprisonment for responsible directors. Notifiable transactions that proceed without clearance will be legally void.
- **Information sharing with other regulators**: The NSI Bill permits information sharing with other UK agencies, including the Competition and Markets Authority (**CMA**), and potentially with overseas regulators conducting parallel reviews.

These reforms can be set against the backdrop of other major jurisdictions broadening their discretionary powers to review transactions that raise national security or other "public interest" concerns. An EU-level FDI regime (see **EU FDI Screening Regulation**) came into full effect in October 2020 and the European Commission is urging the 14 EU Member States that currently have FDI regimes to use these "to the fullest extent" during the current health crisis. Further reforms to the Australian FDI review system are also expected early in 2021.

Identifying notification requirements and developing clear engagement strategies with regulators in the UK and elsewhere is increasingly critical to ensure a smooth pathway to deal closing. Deal teams are encouraged to take account of these UK reforms (particularly given the ability of the UK government to retrospectively review transactions completed from 11 November 2020 onwards), as well as the increased interventionism of the CMA at an early stage in deal planning. This will invariably assist parties in mitigating adverse timing and other execution risks and the risk of a retrospective review.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.


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