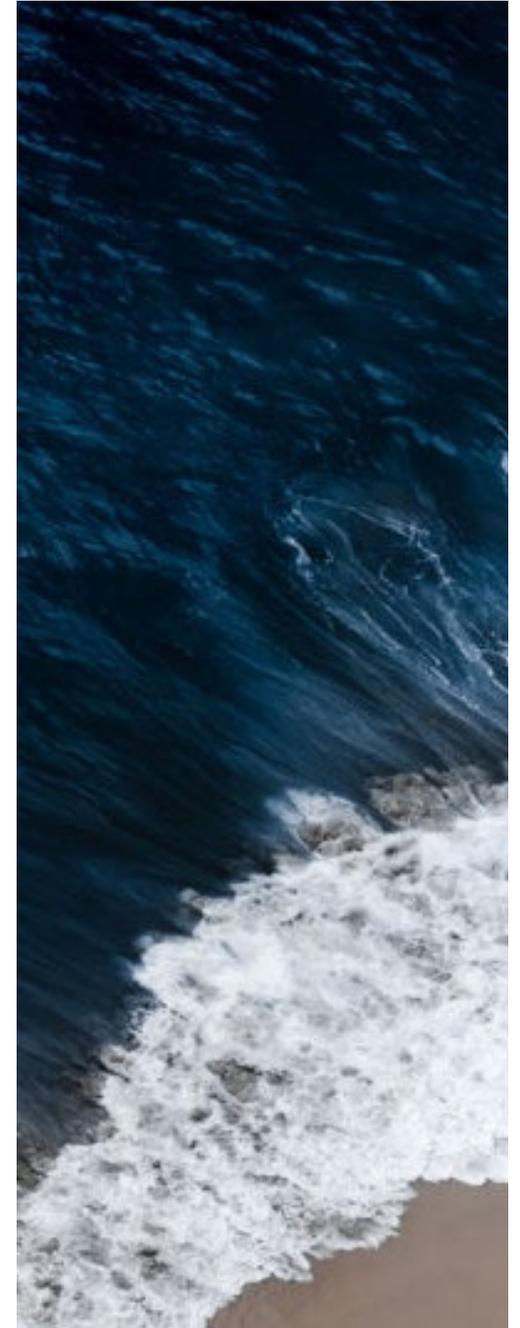




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The UK's proposed new National Security and Investment regime

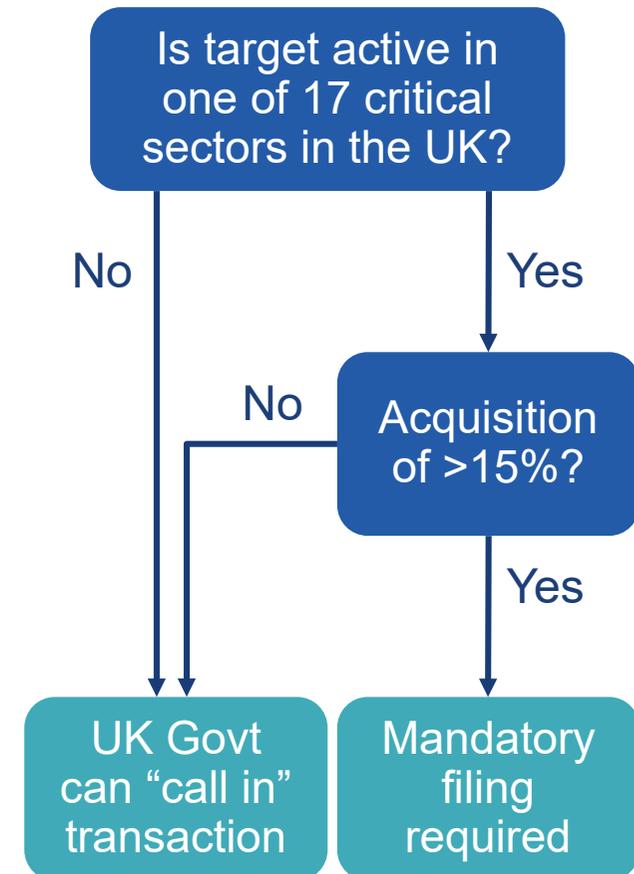
November 2020



The National Security and Investment Bill

An overview

- **National Security and Investment Bill (NSI Bill)** published on 11 November 2020, and currently before parliament
- A **mandatory filing obligation** for acquisitions of **15% or more** in a company operating in one of **17 critical sectors** in the UK
- Below 15% the UK Government may still exercise its power to “**call in**” a **transaction for review** if the acquirer obtains **material influence** over the policy of the target entity
- Companies will be able to submit a **voluntary filing** for acquisitions of assets/IP in the 17 sectors and any acquisition outside the 17 sectors
- The Government has power to call in **non-notified transactions** for review at any time up to **6 months** after it becomes aware of the transaction, provided this is within 5 years of the acquisition of control
- There are no materiality thresholds (e.g. based on turnover) for mandatory filing under the Bill
- Expected to come into force in **Spring 2021**



Critical sectors list

Advanced materials

Artificial intelligence

Autonomous robotics

Civil nuclear

Communications

Computing hardware

Critical suppliers to Government

Critical suppliers to emergency services

Cryptographic authentication

Data infrastructure

Defence

Energy

Engineering biology

Military or dual-use technologies

Quantum technologies

Satellite and space technologies

Transport

How the new regime will work

- Applies to **all investors – UK and non-UK**. Government has said it wants foreign investment to increase going forward
- "Call in" power applies even where buyers **don't have a direct link to the UK** e.g. Japanese company buys a target based in France but selling goods or services into the UK
- New Government department will review notifications and reach an **initial decision in 30 working days**
- If it identifies **national security concerns**, it will "call in" the transaction for a **more detailed and longer review** (30 working days + potential extension of 45 working days) – **remedies** can be required as a condition of clearance (in a worst case scenario, **prohibition/unwinding order** can be implemented)
- **Sanctions for non-compliance** are significant – non-notified transactions caught by the mandatory filing obligation will be **void**. Sanctions also include **financial penalties / director disqualification / imprisonment**

Government has "call in" power in the interim period – after the legislation comes into force in Spring 2021, the Government will be able to "call in" any transactions that have completed from 12 November 2020 onwards that are within the scope of the new regime and could give rise to national security concerns

Impact on investment into the UK

What companies should consider

Government has published draft definitions for the 17 specified sectors and is consulting on them until 6 January 2021 – many sectors are broadly defined

Consider whether any deals completing on 12 November 2020 onwards risk being "called in" by the Government because they give rise to a potential national security concern – if so, it may be advisable to seek informal guidance

Ensure you have completed appropriate due diligence on a target's activities if it is UK-based or sells into the UK

Consider whether deals should include a NSI Bill condition and factor this into the long stop date, alongside any other merger control/FDI filings needed

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