

## THE NATIONAL SECURITY AND INVESTMENT ACT 2021: ANNUAL REPORT 2024 AND UPDATE

### **Review of the 2024 Annual Report on the UK's National Security and Investment Act 2021**

This article is the fourth in a series of articles on this topic published on 8 August 2023[1], 30 September 2022[2] and 19 August 2021[3], and follows the publication by the UK Government's Investment Security Unit (ISU) of its latest report on the application of the investment screening regime established by the National Security and Investment Act (NSIA) on 10 September 2024.

The NSIA is an important piece of UK legislation; it gives the UK Government powers to scrutinize and intervene in business transactions to protect national security, such as takeovers and other acquisitions. Together with legislation on mergers and acquisitions and international sanctions, the NSIA is one of the few overt limits to the freedom to transact with UK companies in sensitive sectors.

However, the perspective we have of the NSIA is still incomplete. The Act only came into force on 4 January 2022 and the latest report is only the second full 12-month period report to become available[4] covering the period from 1 April 2023 to 31 March 2024. The number of transactions called-in by the ISU for extended review is also limited: less than five percent of the transactions notified during the reporting period. The number of notified transactions increased slightly from the prior reporting period[5] but remains less than half of what the Government had originally expected the Act would generate. It is possibly premature to draw conclusive lessons from its application.

Nevertheless, domestic and international investors must pay particular attention to the requirements of the Act because of its ambit, the UK Government's powers to intervene and the severe penalties that may be imposed (financial, criminal)[6]; again, we note that in the 2023-2024 reporting period, the ISU has issued only five final orders[7] imposing conditions to mitigate the identified national security risks of the relevant transactions

(and no outright prohibition) and that since the entry into force of the Act, no penalties have been imposed. Yet, the NSIA has become an important parameter of investments in the UK where they are in scope and, subject to the reservations made above, the ISU's third report highlights the following points:

Although nearly all the 17 industry sectors which are subject to mandatory notifications were among the transactions called in for further assessment, more than half of those concerned the defence and the military and dual-use sectors and all the final orders concerned those sectors or communications. Transactions involving investments in academic research and development in higher education were again also among the transactions scrutinized, showing the UK Government's concern about the dissemination of new technologies coming out of universities (underlining its focus on industry and target risks).

As was the case for the prior annual reporting period, transactions involving acquirers associated with China caught the attention of the UK Government; they accounted for the highest proportion of those called in with 41% of total, and although no final orders were issued to Chinese investors, eight of ten transactions abandoned after call-ins were connected to China. Acquirers associated with the UK accounted for the second highest number of called-in transactions (39%), underlying the fact that the Act ambitions to prevent, remedy or mitigate a risk to national security as well within as outside the UK; indeed two of the five final orders issued concerned acquirers associated with the UK[8].

Although transactions notified to the ISU, mandatorily or voluntarily, are typically cleared or called-in within the statutory time limit of 30 working days, it takes another 30 or so working days for the ISU to issue final orders or unconditional clearance. But it also takes on average seven to ten working days for notifications to be logged-in once submitted, which means that in practice the whole process can take in excess of 100 calendar days from start to finish, a significant amount of time to be set aside as a condition to closing for a transaction. This is not considering the ability of the ISU to issue requests for further information which 'stop the clock'.

It may be that the Act, now in its third year of implementation, acts as a deterrent to transactions that investors evaluate might be prohibited or limited by the ISU; this could explain the sharp drop in final orders in the 12 months under review: five against 17 for the 14-month period from its implementation on 4 January 2022 to 31 March 2023; and be consistent with the 33 notifications received in the reporting period concerned past transactions for which post-validation was sought, a possible measure of the increased awareness of the Act and the ISU's remedial or sanctioning powers. Other factors may have also played a role in the absence of called-in deals connected to Russia.

Last but not least, it is worth keeping in mind that the ISU monitors the press for market information which may reveal investments and may compel parties to make an NSIA filing; the UK Government has up to five years after completion to call it a deal for review (and does use this power[9]), making it all the more necessary for parties concerned to evaluate their investment in light of the Act: industry risk, target risk, acquirer risk and control risk, and assess on balance the need for a voluntary filing (or indeed, as a last

resort, to file for retrospective approval where the deal should have been notified – e.g. the 33 notifications referred to above).

The detailed guidance and statistics of the successive reports are available on the gov.uk website[10].

1. Available at [https://www.linkedin.com/posts/azmi-%26-associates\\_azmilaw-legalupdates-nationalsecurity-activity-7094542120203526144-fXR6/?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/azmi-%26-associates_azmilaw-legalupdates-nationalsecurity-activity-7094542120203526144-fXR6/?utm_source=share&utm_medium=member_desktop).
2. Available at <https://www.linkedin.com/pulse/national-security-investment-act-2021-practice-azmi-associates/?published=t>.
3. Available at [https://www.linkedin.com/posts/azmi-%26-associates\\_new-uk-national-security-and-investment-regime-activity-6833961446615982080--POW](https://www.linkedin.com/posts/azmi-%26-associates_new-uk-national-security-and-investment-regime-activity-6833961446615982080--POW).
4. The first report published in June 2022 covered only the first 3 months of the regime, from 4 January to 31 March 2022.
5. 906 notifications, up from 865 in the period 1 April 2023 to 31 March 2023.
6. Turnover-based fines of up to five percent of worldwide group turnover with a floor at £10 million as well as criminal liability for directors (up to five years imprisonment).
7. Approximately half a percent of all notified transactions, down from 15 final orders in the previous review period which amounted to just under two percent of all notified transactions.
8. Two for the US and one for each of Canada, France and the United Arab Emirates.
9. In the report period, one such deal was picked up, reviewed and eventually the object of a final order.
10. <https://www.gov.uk/government/collections/national-security-and-investment-act>.

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