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**Countdown running for entry into force of new UK national security investment screening regime**

The UK's new national security investment screening regime will enter fully into force on 4 January 2022. From that date, the National Security and Investment Act 2021 (the '**NSI Act**') will give the Government the power to review a wide range of investments in businesses that are active in the UK or acquisitions of related assets. While the new regime has the ultimate objective of preventing transactions that could harm the UK's national security, it will impact a much wider range of deals.

Under the new regime, investments in entities that are active in the UK in 17 specific sectors will have to be notified to the Government and cleared before completion. The notification obligation applies regardless of whether the investor is foreign or UK-based and severe civil and criminal penalties will apply if notifiable transactions are not notified. The underlying transaction will also be void as a matter of English law.

Although 4 January may feel like a long way off, it is now less than three months away. The new NSI regime will have a potentially significant impact on timetables and deal certainty for transactions where closing is due to take place after that date. As a result, it may well be relevant to transactions that are currently being negotiated. It is also notable that, once the regime is in force, the Government will have the power retrospectively to review and call in any transaction that completed on or after 12 November 2020 (the date on which the bill was originally introduced to Parliament).

Filings will be mandatory where the target is active in any of the following sensitive sectors:

- Advanced materials
- Advanced robotics
- Artificial intelligence
- Civil nuclear
- Communications
- Computing hardware
- Critical suppliers to government
- Critical suppliers to the emergency services
- Cryptographic authentication
- Data infrastructure
- Defence
- Energy
- Military and dual-use
- Quantum technologies
- Satellite and space technologies
- Synthetic biology
- Transport

The assessment of whether a qualifying entity is involved in a specified sector will involve careful analysis of the target's business alongside the relevant statutory definitions. These are extremely detailed and prescriptive, with some running to several pages.

A notifiable transaction arises if an investor:

- acquires shares or voting rights that take its interest in the target past any one of the following thresholds:
    - from 25% or less to more than 25%;
    - from 50% or less to more than 50%;
    - from less than 75% to 75% or more; or
- acquires voting rights that enable it to secure or prevent the passage of any class of resolution governing the affairs of the entity.

A notifiable transaction occurs each time a relevant threshold is passed. In other words, if an investor acquires an increasing stake in a qualifying entity over time, separate qualifying transactions arise when its stake passes 25% and 50% and again when it reaches 75%.

It is important to note that *any* change in control of an entity is potentially a qualifying acquisition, even if takes place entirely within the same corporate group and overall control is therefore unaffected. As a result, an internal corporate reorganisation may give rise to one or more qualifying acquisitions.

Unlike many other regimes, the new UK regime is not limited to controlling investments in entities established in the UK. In fact, the acquisition of an entity established outside of the UK will be caught by the regime if the entity carries on any activities in the UK or supplies goods or services to persons in the UK.

Notifiable transactions will need to be notified in advance of closing, using a relatively simple online form. Once the form has been accepted, the Government will have 30 working days to decide whether to call in the transaction for a detailed review or clear it.

A notifiable acquisition that is completed without the approval of the Secretary of State, or that is completed in a manner that does not comply with a final order, is void. This means that it is treated in law as if it had not taken place.

Completion without approval or failure to comply with an order will be punishable by up to five years' imprisonment and/or an unlimited fine. Other offences will be punishable by up to two years' imprisonment and/or an unlimited fine.

Although transactions outside of the sectors listed above will not have to be notified, the Government will be able to intervene on its own initiative in a wider range of transactions across the economy if it considers national security concerns arise. This will include acquisitions of material influence over an entity (a lower threshold than those applicable to notifiable transactions) and acquisitions of assets. Acquisitions of assets situated outside of the UK will be reviewable is the asset is used in connection with activities carried on in the UK or in connection with the supply of goods or services to persons in the UK. Parties to such deals will be able to head off the risk of intervention post-closing by notifying voluntarily, should they wish.

Acquirers will thus be faced with two distinct questions under the NSI regime:

- Does a planned transaction have to be notified under the mandatory filing regime?

- Is there a risk that the transaction will be called in for an in-depth assessment and potentially be subject to remedies?

In practice, the main priority for an acquirer will be to determine whether a filing is required. As noted above, this will typically require a detailed assessment of the target's activities, as well as analysis of the type and extent of the interest to be acquired.

Given the significant adverse consequences of not notifying a notifiable transaction, where there is any doubt acquirers are advised to err on the side of caution when making this assessment.

Where a transaction needs to be notified, deal documentation may need to contain suitable suspensory wording to ensure that completion does not take place until cleared.

Although the Government has stressed that it does not want to deter inward investment into the UK, the new regime marks a significant step away from the UK's traditionally open approach in this area. Indeed, we have already seen much higher levels of political intervention in transactions over recent years under the current national security regime. This trend is likely to continue under the new regime. Overall, acquisitions by Chinese entities of defence-related businesses will be most at risk of prohibition under the new regime, while a much wider range of transactions are likely to be subject to remedies designed to protect sensitive technologies or maintain a viable business presence in the UK.

**About Euclid**

Euclid Law was created by experienced competition lawyers with a common desire to build a new competition law and foreign direct investment firm that is agile, collaborative, highly commercial in its thinking, innovative in its approach to delivering results and free from the constraints of larger law firms.

Our core expertise covers all aspects of competition law, including cartels and anti-competitive agreements, merger control, abuse of dominance, state aid, competition litigation, market investigations as well as audit and compliance, as well as the expanding field of foreign direct investment controls. With offices in both London and Brussels, in-depth experience and a network of contacts in key jurisdictions around the world built up over many years of practice, we have the ability to advise clients across Europe and worldwide. We represent clients before EU, UK, German and Belgian authorities and courts.

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