

# NSIA – avoiding unwelcome surprises

**The National Security and Investment Act 2021 (NSIA) came into force on 4 January 2022. It gives the UK government broad powers to review certain corporate transactions and to impose conditions on, block or retrospectively unwind them. The NSIA is intended to protect national security, but its scope and impact are often unexpectedly far reaching. Josh Smith of RPC outlines some of the pitfalls and explains how to avoid your business being caught out.**

Unlike many foreign direct investment regimes, the NSIA's focus is on the activities of the entity in question, not on the identity or nationality of an acquiror or investor. It imposes a mandatory obligation to notify the government of certain activities where the business operates within one of 17 specified sensitive sectors (see box).

## The NSIA's 17 sensitive sectors

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

Not surprisingly, these include sectors like defence, energy and critical suppliers to government. However, they also encompass areas touching many modern organisations (such as artificial intelligence and data infrastructure). Moreover, the interaction with these sectors does not have to be extensive – even a small business line, contract or arrangement on the periphery of a specified sector can be an NSIA tripwire.

Crucially, there is no financial threshold for the NSIA to apply, so even low value deals fall within its scope. The NSIA is also not just about M&A transactions where there is a change of ownership – notifications can be required where investors simply gain material influence (for example, through board control rights) or the ability to pass or block certain shareholder resolutions.

Perhaps counterintuitively, intragroup transactions are also not exempted. So you may need to notify and obtain clearance before undertaking routine group reorganisations – for example, inserting new holding companies or moving subsidiaries, including where there is no ultimate change of ownership. Even the appointment of liquidators or receivers can be caught.

## Practical impact

Once an NSIA filing is made and has been accepted (which can take a week or more), clearance decisions are generally issued close to the expiry of the statutory review period of 30 working days. There is no fast-track process, even where the transaction or activity clearly doesn't raise national security concerns.

The potential 'called-in' phase – when a transaction is subject to more detailed review – can be lengthy and uncertain. So, where the NSIA is in play, timetables are often disrupted and deals and processes can become unexpectedly complex and costly, particularly if the requirement to notify is only identified late in the proceedings.

## Getting it wrong

If you are planning to sell, bring in new investors or restructure, it's unsafe to assume the NSIA regime won't apply to your business. Relevant M&A deals and other corporate events that are not notified and cleared will be automatically void, and the evidence so far suggests that the government monitors market developments to identify relevant transactions. Non-compliance can also attract severe civil and criminal penalties, and buyers now routinely ask sellers to stand behind warranties that the NSIA does not apply in sale and purchase agreements. Owners and directors should therefore seek appropriate advice as early as possible in their processes. Failing to do so may result in unwelcome surprises.

## Contact us

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