

TheCityUK calls for more risk-based approach to operation of the National Security and Investment Act

TheCityUK has responded to the government's call for evidence on the operation of the National Security and Investment (NSI) Act. We are seeking improvements to the UK's investment screening process to ensure that the Act focusses on transactions that pose national security risks and provides a smoother environment for the vast majority of transactions that do pose such risks.

Our key points and recommendations to the [call for evidence](#):

- Industry understands the vital need to protect the UK's national security, particularly in the current geopolitical environment. Overall, individual members feel the regime is working well, or at least better than some had expected.
- Nevertheless, at a general level, **the breadth of the scope of the regime means a high volume of deals with no obvious national security implications are being captured**, particularly in comparison to other jurisdictions. **This can act as a drag on investment and the UK's wider competitiveness.**
- International investment is vital in contributing to the government's growth agenda. However, there is a growing risk of the UK's broad NSI regime causing uncertainty for investors because, politically, economic security is increasingly being seen as synonymous with national security. **While it is recognised why the government does not and will not define national security, it would be beneficial if the government could explain how it intends to distinguish between economic and national security.**
- The NSI Act [Annual Report 2022-23](#) notes that 866 notifications were received in total. Although this is lower than the number anticipated when the Act was being developed, just 65 (about 7.5%) of the notified acquisitions reviewed by the ISU were called in for further assessment. We would note that the 866 notifications under the UK regime is double the number received by the [Committee on Foreign Investment in the United States](#), which received 440 filings, despite an economy approximately eight times smaller than the US economy. This disparity underlines the opportunity to make improvements to support further productive FDI.
- 93% of NSI Act notifications in 2022/23 were cleared within 30 working days of the filing being accepted as complete. This may seem a limited burden on business. But by capturing many unproblematic transactions the parties involved in these transactions are not only shouldering an administrative burden. All parties involved in a transaction that is notified must factor in at least a couple of extra months to their deal timelines, to ensure compliance with the NSI Act's notification requirements, with risks to the success of what may be a time-limited business opportunity. This is not only a drag on the competitiveness of the UK as an investment location, but it may also lead to investors choosing to pursue investment opportunities elsewhere.

- **We welcome proposals to refine the mandatory sectors and we do not think the scope of the regime should be broadened further.** We welcome the proposals to work with industry to bring greater clarity to the definitions of the Advanced Materials, Synthetic Biology, Critical Suppliers to Government, and Artificial Intelligence areas. We would note, however, that the proposals to introduce new sectors – Semiconductors, Critical Minerals – would potentially broaden the scope of the Act still further, even if some of these activities are already included under the Advanced Materials area.
- In particular, in the proposed new Critical Minerals area, where the concept of dual use might be less easily defined and there is increasing scrutiny of supply chains, there is a risk of creating uncertainty about the distinction between economic or supply chain security, on the one hand, and national security, on the other. **It is vital that the government clearly signals to investors that it is using its screening powers to review investments solely for national security purposes.**
- The high volume of notifications would also suggest there are opportunities to provide greater clarity to businesses about the types of cases and risks the Investment Security Unit (ISU) wishes to investigate within the mandatory sectors. **Greater transparency and specificity from the ISU regarding the reasons cases are called in would benefit private sector understanding of the national security environment.** Subject to concerns around sensitive information, this information should be shared publicly in order to provide guidance for future investors.
- **We welcome the proposals to exempt certain types of transactions from mandatory notification requirements – such as internal reorganisations where ultimate beneficial ownership remains unchanged.**
- **We would continue to urge the government to go further in considering more streamlined notification and/or clearance process or exemptions for well-known UK institutional investors, investors from key UK allies, or other well-known repeat acquirors that are familiar to the ISU.** For example, Australia’s [investment screening regime](#) applies higher monetary thresholds to private investors from certain countries (New Zealand, and the US). The UK should consider a similar approach for those markets which are strong security allies (e.g. Five Eyes).
- The implications of the Act’s initial design and of the proposals set out in this call for evidence appear to be that the UK regime is intended to continue to cast a wide net on potential deals. **In the absence of a more targeted approach to acquirer risk, and with the government’s proposals to broaden the scope of the Act, we would expect the number of notifications to increase as the dealmaking environment improves.**
- If the government wishes to ensure that its approach is consistent with the aim of making the Act more business-friendly, **the ISU should consider how it might develop a risk-based triaging process. Such a process should be able to filter for higher and lower risk acquisitions, with a fast-tracked review process to get lower risk deals processed through the system more quickly, for example by setting a new target of 10 working days for these acquisitions.**

- **This might be achieved via applying financial value thresholds to deals and/or distinguishing between higher and lower risk sectors within the sensitive sectors identified by the Act.** We have only limited experience of the implementation of the Act to date, but some trends already seem evident. For example, **the vast majority of all call-ins have been in just three of the 17 sectors** (37% in the Military and Dual Use sector of the economy, 29% in Advanced Materials, and 29% in Defence). **If trends of this kind continue, the resultant data should be used to inform a more tailored and risk-based approach to the application and operation of the Act.**
- **Administrative processes for investors interacting with the regime should be streamlined further.** For example, repeat acquirers would benefit from a simplified filing process where they could confirm that previous details regarding the acquirer are still accurate and just providing details of the new investment/target. This would remove the need for the duplication of work including associated costs of repeatedly providing the same information.

For more information, or to discuss your experience of operating under the Act, please contact Stephen Booth at stephen.booth@thecityuk.com.