



Where Things Stand

April 30, 2023

National Security and Investment Act 2021, Part 1 – Background and Key Features

In a series of articles in the coming months we will consider the National Security and Investment Act 2021 (the “NSI Act”) and its impact on the real estate finance market.

In this month’s article, we will provide some background on the NSI Act and introduce some of its key features. In the following months, we will discuss the notification and intervention provisions, sanctions for non-compliance, and impact on the real estate finance market in respect of the NSA Act.

Background

The NSI Act came into force on 4 January 2022. The NSI Act is a significant piece of new legislation which establishes a stand-alone statutory regime for government scrutiny of, and intervention in, acquisitions and investments for the purpose of protecting national security in the United Kingdom (the “UK”).

The provisions of the NSI Act replace the existing public interest merger regime provisions of the Enterprise Act 2002 to the extent that a transaction involves national security considerations. The NSI Act gives the UK Government the power to screen transactions where there is a change of control of entities or assets, even when these assets are based overseas.

Key considerations

Lenders and investors should give due consideration to the NSI Act in order to protect their transactions and officers from potential criminal liability. They should also ensure that they are cognisant of the new rules given the broad scope of the mandatory notification system under the NSI Act.

Lenders should also carefully consider the implications of the NSI Act in respect of their secured lending transactions, especially when it comes to share security and enforcement.

Some key issues for investors to consider are:

- whether their transaction requires mandatory notification? and if not, may a voluntary notification be advisable?
- ensuring that NSI Act considerations are factored into deal timelines and documentation to manage the risks of delay or Government intervention.

As noted above, we will explore these issues during the course of this series in the coming months.

Key features of the NSI Act

The key features of the NSI Act include:

- mandatory notification of some transactions in 17 specified sectors (see below);
- voluntary notification for certain transactions that may give rise to national security concerns; and
- call-in powers under which the government’s powers to “call-in” transactions across all sectors of the economy on national security grounds are significantly extended.

We will explore the notification requirements in next month’s issue.

What are the 17 designated sectors?

The NSI Act establishes a mandatory notification requirement where a change of control occurs in relation to an entity with “specified activities” within any of the 17 designated sectors, namely: (a) Advanced Materials; (b) Advanced Robotics; (c) Artificial Intelligence; (d) Civil Nuclear; (e) Communications; (f) Computing Hardware; (g) Critical Suppliers to Government; (h) Critical Suppliers to the Emergency Services; (i) Cryptographic Authentication; (j) Data Infrastructure; (k) Defence; (l) Energy; (m) Military and Dual-Use; (n) Quantum Technologies; (o) Satellite and Space Technologies; (p) Synthetic Biology; and (q) Transport (the “sensitive sectors”).

The sensitive sectors and final definitions for these sectors are set out in a **Statutory Instrument – the National Security and Investment Act 2021** (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021. The sector definitions are relatively detailed and technical and, recognising their complexity, the Department for Business, Energy and Industrial Strategy has published **guidance** to help explain what the definitions are intended to capture and how to apply them.

Closing thoughts

Despite this guidance, parties may also need to consider several of the sector definitions given a number are closely linked, and take care that even if a target’s core activities are not within one of the sensitive sectors it does not have other activities that are caught (*e.g.*, a technology product involving artificial intelligence or advanced robotics).

In next month’s edition of *REF News and Views* we will further expand on the NSA Act’s notification and intervention provisions.