

# The proposed new UK national security investment screening regime significantly affects the way investments can be reviewed by the UK government

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The UK has published proposals for a new regulatory regime, the National Security and Investment (NS&I) Bill, which, on enactment, will significantly affect the way investments in the UK can be reviewed by the UK government where they raise national security considerations.

The potential reach of the bill is very broad with a requirement for mandatory filing before closing acquisitions of, and investments in, companies involved in a wide range of activities, as well as an ability for the UK Government to impose retrospective remedies on an even wider range of transactions, extending well beyond M&A.

The assets and activities which trigger the regime are also broadly defined permitting scrutiny of acquisitions consisting only of an asset or assets, falling short of a going concern, including land and tangible property, and also ideas, information or techniques such as databases, algorithms, formulae and software.

In addition to the procedural aspects, the UK Government's ability to substantively intervene in transactions is linked to "a risk to national security." It remains to be seen how this will be applied in practice but it potentially leaves the Government wide scope for interpretation in looking, for example, at those who might be involved in acquisitions, whether directly or indirectly, for example by providing funding to an acquiror.

Practical takeaways at this stage for anyone involved in potentially relevant activities include:

- The rules are not yet finalized so businesses and advisors should consider taking advantage of the opportunity to influence their final form by engaging with the UK Government;
- Any deal within the scope of the mandatory filing regime will need to include an appropriate closing condition – likely to significantly increase the number of UK deals where there is a gap between signing and closing;
- Bearing in mind the proposed application of the new rules is very broad and will often not be immediately obvious, the early stages of deal planning and diligence of any transaction will now need to include identifying whether those rules are likely to apply, and if so, how;
- Buyers will want to consider whether any aspect of their business, or the way their offer is constructed, could give the UK Government cause for concern regarding a risk to national security; and
- Sellers will want to consider what early stage diligence to undertake on potential

investors/acquirors to assess the risks of the UK Government identifying a potential risk to national security and substantively intervening in the deal.

Hogan Lovells is well-prepared to advise on these matters and our global network of regulatory and transactional teams has the commercially focused insight and guidance to navigate the complexity and uncertainty that flows from regulatory schemes in flux.

## Contacts



Jacky  
Scanlan-  
Dyas

Partner



Wataru  
Kamoto

Partner

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