

UK National Security and Investment Bill Receives Royal Assent

by Joseph Lewin

Background

The National Security and Investment Bill (the “**Bill**”) received royal assent and was enacted into English law as the National Security and Investment Act (the “**Act**”) on 29 April 2021. As discussed in our previous Update¹, the Act creates a statutory regime granting to the Investment Screening Unit (the “**ISU**”) of the Secretary of State for Business, Energy and Industrial Strategy robust powers to scrutinise acquisitions which may pose a risk to the national security of the UK. This eBriefing will summarise the key changes made to the Bill during the course of its Parliamentary debate prior to it becoming the Act and the current implementation of the Act.

Updates to the Bill

The first substantive amendment made to the Bill concerns the interpretation of the term ‘control’. By way of reminder, transactions where a purchaser acquires the control of a qualifying entity active in a sensitive sector will require a mandatory notification to the ISU. In the Bill, there were a number of thresholds to determine what constitutes “control”, including the acquisition of a right or interest in a qualifying entity which would increase the shareholding or voting rights held by a purchaser from less than 15% to 15% or more. Under the Act, a transaction which involves the acquisition of this kind of control of a qualifying entity in a sensitive sector will no longer require mandatory notification to the ISU. It should however be noted that the Act retains the requirement for mandatory notification if a purchaser increases its shareholding or voting rights from less than 25% to 25% or more of a qualifying entity active in a sensitive sector.

The second principal amendment to the Bill expands the scope and content of the annual report to be published by the Secretary of State at the end of each financial year with respect to the application of the new regime. This report will now include, for example, (i) the average number of working days between receipt of a notice by the ISU of a transaction and its decision, and (ii) the number of voluntary notices the ISU has

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- Joseph Lewin

Related Capabilities

- National Security Law
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accepted.

Summary

Given the concerns highlighted in our previous Alert concerning the extremely wide scope of the Bill, the amendments made to the Act are unlikely to assuage concerns about the potential disruption that the Act may cause to M&A activity. On 2 March 2021, the UK Government published the results of its consultation in relation to the 17 sensitive sectors, which went some way towards clarifying and tightening the definitions of certain sectors, while leaving others deliberately broad.

It should be noted that despite the Act now being English law, the secondary legislation and statutory guidance which will be required for the Act to be applied in practice, including most importantly guidance as to the scope of mandatory notification and the form of notices made under the Act, have not yet been published. Therefore, although the Act is now in force, there is no formal process in place for making a voluntary or mandatory notice to the ISU under the Act.

As identified in our previous Alert, the ISU is currently encouraging informal approaches via email and has expressed willingness to issue non-binding guidance as to whether transactions are likely to be subject to mandatory notification when the secondary legislation is eventually published. The UK Government has indicated that this secondary legislation and guidance is expected to be published at the end of 2021.

¹ <https://www.dorsey.com/newsresources/publications/client-alerts/2020/11/national-security-and-investment-bill>.