

Disclaimer

Please note: this is a **succinct overview** of what the NS&I act entails and **should not be taken as legal advice**.

If you would like further, more detailed training or information on this, please contact jyoung@kingsleynapley.co.uk

27 September 2022 | John Young

The NSIA A brief outline



The National Security & Investment Act 2021

- New stand alone regime for government scrutiny of and intervention in **acquisitions** and **investments** for the purposes of protecting national security
- Effective from 4 January 2022. But applies to **transactions completing on or after 12 November 2021**
- Introduced because of concerns about potentially hostile foreign investment into UK
- Intended to provide investors with certainty and clarity as to:
 - types of deal the government may be interested in and
 - the process for examining them

Intro - The National Security & Investment Act 2021

- New stand alone regime for government scrutiny of and intervention in acquisitions and investments for the purposes of protecting national security
- Replaces previous powers under Enterprise Act 2002
- Effective from 4 January 2022. But applies to transactions completing on or after 12 November 2021
- Introduced because of concerns about potentially hostile foreign investment into UK
- Intended to provide investors with certainty and clarity as to:
 - types of deal the government may be interested in and
 - the process for examining them
- Remains to be seen how this will work in practice

What transactions are caught by the NSIA?

- Act applies when → “Trigger Event”

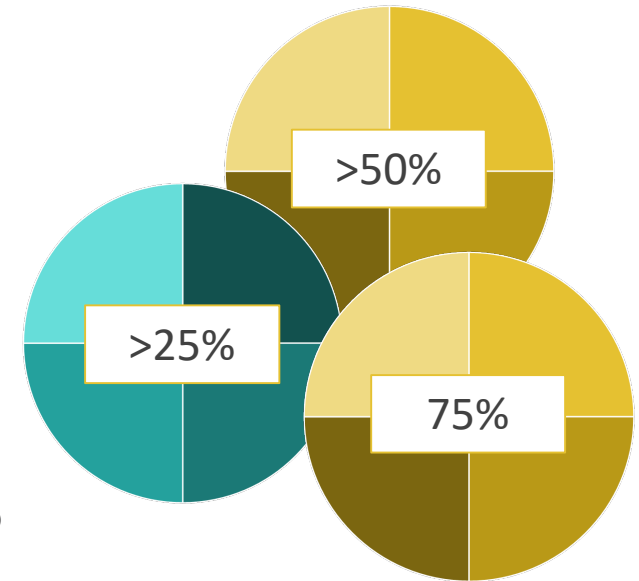
Trigger Event: a person acquiring rights or interests over either a “qualifying entity” or a “qualifying asset”

- NB – no minimum thresholds
- Qualifying entity
 - Any entity other than an individual whether or not a legal person
 - Includes overseas entities if “carrying on activities in the UK” or “supplying goods or services to the UK”
- Qualifying assets not subject to mandatory notification – unlike qualifying entities

The Trigger Events

- **4 events** for qualifying entities:

1. The percentage of shares in the qualifying entity held by the acquirer increasing to more than 25%, more than 50% or at least 75%
2. The percentage of voting rights in the qualifying entity held by the acquirer increasing to more than 25%, more than 50% or at least 75%
3. The acquisition of voting rights in the qualifying entity enabling the acquirer (whether alone or together with other voting rights it holds) to secure or prevent the passage of any class of resolution governing the affairs of the entity
4. The acquirer being able to exercise material influence over the qualifying entity's policy



- Transactions between thresholds are not trigger events

Notice and Calling In

- **Mandatory Notice** – if:
 - On completion Trigger Event one, two or three will occur; and
 - The qualifying entity undertakes particular activities in one of 17 sectors
- **Voluntary Notice** – if any Trigger Event will occur or has occurred
- **Call in by Secretary of State** if:
 - A Trigger Event has occurred or is in contemplation;
 - Trigger Event has given rise to or may give rise to a national security risk;
 - Where the transaction has completed, within six months of Secretary of State becoming aware of it provided this occurs within five years of completion
- **BUT** five year limitation does not apply to transactions subject to mandatory notification



Secretary of State's Determination

- **Following a mandatory or voluntary notice – 30 days** to call in or confirm no further action
- If there is a call in Secretary of State has up to **105 working days (for notified) or 75 working days (non-notified)** to either:
 - issue a final notification clearing the Trigger Event; or
 - make a final order where a national security risk has been found

→ Final order **may impose necessary and proportionate remedies** for the purpose of preventing, remedying or mitigating the national security risk

- Kind of things which may be included are:
 - provisions requiring a person to do or not do particular things and
 - the appointment of a person to conduct or supervise certain activities

Failures to comply

- **Acquisition void.**
- But there is a retrospective validation procedure for failure to give mandatory notices
- **Offence committed.** Significant penalties, including fines calculated by reference to worldwide turnover and imprisonment for up to five years
- Possibility of injunction or order for specific performance



Conclusion

- ✓ **Operation of the NSIA is complex.** Careful step-by-step assessment is required
- ✓ Could, in theory, **apply to very small businesses and those with minimal UK trading**
- ✓ **Potentially very serious implications** both practically and legally of getting it wrong
- ✓ **Take advice at an early stage** if any possibility of national security issues



National Security and
Investment Act 2021



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

The Seventeen Sectors

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