

# SC STRATEGY LTD.

## Kingsley Napley–SC Strategy Ltd

### Joint NSIA Briefing: Summary of Key points

#### Background:

- The National Security & Investment Act (NSIA) was conceived over concerns that the Government had insufficient powers and tools to mitigate key challenges to national security from business activity. Recent years have seen an uptick in hostile FDI (as noted in the first ever joint speech by the [Director General of MI5](#) and [Director of FBI](#) in July 2022) and there have been a number of high profile cases in which UK companies, some only now perceived as essential components to UK national security, have been acquired by foreign companies leading to a loss in national capability.
- The NSIA aims to deliver a step change in managing risk to national security, whilst also delivering predictability for business, particularly in terms of timeframes and stages over which they can expect a transaction to be reviewed. As shown by the results given in the [NSIA annual report](#), the process is working well and within statutory timelines.
- Final Orders and Notifications to date show that it remains largely focused on cases, not countries and scrutiny is unfolding according to statutory stages and timelines. They show a complex and nuanced interpretation of national security under the Act, which assesses the concerns in the future, as well as the near term:
  - China-related cases appear to have been blocked because they would have allowed a hostile state to improve its national security capabilities and potentially compromise those of the West;
  - BT/Altice, Inmarsat/Viasat and Parker-Hannifin/Meggitt demonstrate concern that even businesses from 'friendly countries' present challenges to national security, whether that be through changes of business strategy, services and client focus in companies critical to UK national supply chains, sensitive data, and critical national infrastructures; or potential risk to sovereign military capability from exports controls.

#### Challenges for companies:

- There remains a number of 'shocks' and confusions:
  - Though within statutory timeframes, some companies are experiencing delays, especially in more complex cases or when insufficient levels of information are provided by the companies;
  - Communication from the ISU is limited. This is due to difficulties over sharing sensitive information related to national security concerns that require government clearance levels that many companies do not have. Companies only have a short timeframe to respond, including to proposed mitigations/remedies which can have major consequences for the acquisition.
  - Judging national security concerns is a difficult area for many companies, especially SMEs, who do not have easy access to sophisticated national security analysis to help them understand the specific national security concerns related to their entity or asset.
  - The definition of national security remains vague and basic. However, there should be no expectation that the definition will become any clearer – it makes no sense to national security: there are many 'ways' national security can be affected; it constantly evolves; and, ultimately, it is undesirable from a Government point of view: if you draw a line in the sand, threats and corporate interests will seek new ways or areas to circumvent it.

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## Recommendations for clients:

- **Seek early specialist advice on the potential national security implications** that could arise through a proposed acquisition of an entity or asset that may fall under the NSIA's purview:
  - If you are the acquirer, national security should be a core part of your pre-deal due-diligence. How high is the risk of a final order blocking the deal, or a notification being so restrictive you cannot extract the value you hope for?
  - If you are the seller, make sure you assess the full breadth of the products and services you deliver. How might it pose a threat to national security both conventionally and unconventionally?
  - If you are a third party exposed to the risk of a deal, what implications will it have for your investment? Do you hold or do you sell?
- **Be proactive and transparent with Government.** A wide range of Departments and Agencies are involved in the process and the costs of negligence are high. Should you want a smooth – and lower cost – review, show willing and be transparent in supplying the Government with the information it requires to make its assessment. You need to understand what responses the ISU is looking for: if answers are not sufficient, especially over UBOs, Information Notices and further questions from the ISU will surely follow, lengthening the review. The less engaging the company, the tougher the review, and the higher the cost.
- **Mitigation, mitigation, mitigation.** This is particularly true for more complex cases where mitigations are likely to be required under a Final Notification/Order. If national security implications of the acquisition have been thoroughly assessed at the beginning, work on mitigation strategies should start early on, putting you in a strong position to propose – rather than receive – mitigations that will both allay the Government's concerns, whilst ensuring the acquisition remains worthwhile to your business.