TheCityUK

FRESHFIELDS

Foreign direct investment and national security regimes

A path to best practice in the UK

April 2025

Executive summary

The financial and related professional services industry understands the vital need to protect the UK's national security, particularly in the current geopolitical environment. In turn, the government understands the need to drive growth and reduce regulatory hurdles to investment in the UK. For the UK's growth ambitions to be realised, it is essential that the various arms of government are all pulling in the same direction and thorough consideration is given to how the UK's national security policies around investment are targeted.

Re-examination of the UK's investment screening regime under the National Security & Investment Act, 2021 (the **NS&I Act**) is both timely and appropriate. The government's industrial strategy has the promotion of investment at its heart and many of the government's target sectors for investment are also identified as key sectors for screening under the NS&I Act.

International benchmarking of foreign direct investment and national security screening regimes (**FDI regimes**) across various jurisdictions underlines that while the NS&I Act provides investors with a comparatively predictable regime, it casts a very wide net over investment activity compared to other geographies that are competing for investment. It is viewed by international investors as an additional cost of doing business in the UK, which can seem at odds with the pursuit of growth.

Our comparative analysis identifies best practices across FDI regimes in a number of jurisdictions. This should provide government with practical ways to refine the UK regime, so that it can operate in a more proportionate and targeted manner, while continuing to uphold the fundamental objective of protecting national security.

There are three key aspects of the NS&I Act:

- The requirement to make mandatory notifications for investments in entities active in one of 17 prescribed sectors and suspend closing until clearance is received.[1]
- The government's ability to call in non-notified transactions for up to five years after closing (or six months from the Secretary of State becoming aware of the transaction).
- The option to submit voluntary notifications for transactions that are not subject to mandatory notification but may still be called in for review under the government's call-in powers.

Our key policy recommendations are as follows:

1 Increase transparency and dialogue so that fewer notifications enter the system

- Define strategic sectors more precisely – improve definitions to reduce unnecessary notifications.
- More transparency over decision making process – publish non-confidential decisions and provide comprehensive guidance on what is likely to be in and out of scope.
- Earlier engagement between parties and the government – facilitate pre-notification processes for efficient resolution of issues.

2 Limit the scope of transactions covered

- Exclusion of internal reorganisations – implement exemptions similar to other jurisdictions.
- Limit to transactions impacting UK entities – ensure the regime only applies to transactions with a significant UK presence (e.g. entities which are governed by UK law, registered in the UK, or have subsidiaries in the UK).
- Introduce a de minimis threshold – exclude small investments with minimal impact on national security (e.g. investments in entities with an annual turnover less than £5m or a purchase price less than £5m which operate in sectors other than those that are the most sensitive).

3 Introduce fast-track or post-closing procedures to streamline the system

- Establish a fast-track or post-closing process for investments in sectors other than those that are the most sensitive to improve efficiency without compromising national security.

4 Amend non-compliance effects to improve regulatory predictability

- Make transactions voidable rather than automatically void if implemented without prior approval, aligning with UK courts and international practices.
- Remove criminal sanctions for non-compliance.

1 The 17 sectors are: Advanced Materials, Advanced Robotics, Artificial Intelligence, Civil Nuclear, Communications, Computing Hardware, Critical Suppliers to Government, Cryptographic Authentication, Data Infrastructure, Defence, Energy, Military and Dual-Use, Quantum Technologies, Satellite and Space Technologies, Suppliers to the Emergency Services, Synthetic Biology, and Transport.

Introduction

Against an increasingly unstable geopolitical backdrop, perceived risks to national security have become a key concern. As a result, governments have been increasing their scrutiny of inbound, and more recently outbound, investments for national security risks. The Committee on Foreign Investment in the United States (**CFIUS**) is probably the most well-known FDI regime, and many of the US' partners and allies, including the UK, now operate similar regimes.

FDI regimes are a regulatory consideration in almost every cross-border transaction and, in many cases, even domestic transactions. In addition to the number of countries with FDI regimes steadily increasing, the scope of many regimes is widening and authorities are becoming more active in their enforcement efforts.[2] Multinational companies must therefore contend with a patchwork of regimes with diverse requirements, often among nations that have closely aligned security policies and interests. Given the impact of FDI regimes on investment decisions, it is important to analyse whether changes could be made to improve certainty for business and minimise unnecessary regulatory barriers.

The broader landscape surrounding national security and foreign investment is evolving quickly and, with this, the sectors which may be relevant in the future. The rapid pace of change is evident from recent developments such as the 'America First Investment Policy', which aims to preserve an open investment environment, facilitate greater investment from allies, and promote passive non-controlling investments from all foreign persons, while also acknowledging the importance of outbound investment controls. The European Commission has similarly recognised the risks which outbound investments may pose to economic security, by calling on Member States to review outbound investments made by EU investors in three key technology areas of strategic importance in third countries.

In the UK, economic growth is the government's key priority and the success of its growth plan will be largely predicated on the UK's ability to encourage investment from domestic and international sources, particularly in growth-driving sectors. The government's industrial strategy, initially set out in the government's Invest 2035 green paper, has the promotion of investment at its heart. A new Minister for Investment has been appointed from the private sector, as part of a wider Whitehall 'shake up' to strengthen the government's offer and partnership with businesses and investors.[3] Several of the government's target sectors for investment (advanced manufacturing, clean energy industries, creative industries, defence, digital and technologies, financial services, life sciences, and professional and business services) are also identified as key sectors under the NS&I Act.

An enhanced industrial, trade and investment strategy must be underpinned by domestic regulatory policies that enable the UK to compete globally for inward investment. The government has identified disproportionate or burdensome regulation as a drag on investment and growth. The Prime Minister has stated that for "too long regulation has stopped Britain building its future"[4] and promised to "clear out the regulatory weeds" while the Chancellor has stated that the UK must go "further and faster" to achieve economic growth.[5]

It is in this context that TheCityUK and Freshfields LLP have undertaken an analysis of FDI regimes across a number of key jurisdictions to identify how the UK government can improve its regime under the NS&I Act by drawing upon best practice from other regimes.

2 For example, Singapore introduced an FDI regime in 2024 while Switzerland is currently reviewing a bill for FDI regulation. A number of countries in Europe, including Bulgaria, Belgium, Slovakia and Sweden have also recently implemented (or plan on implementing) FDI regimes.

3 No. 10 press release, 'New investment minister to spearhead bolstered Office for Investment', (10 October 2024); https://www.gov.uk/government/news/new-investment-minister-to-spearhead-bolstered-office-for-investment

4 The Times, 'We'll cut the weeds of regulation and let growth bloom', (January 2025), available at: https://www.thetimes.com/uk/politics/article/keir-starmer-growth-chancellor-k68ptvh6x

5 GOV.UK, 'Reeves: I am going further and faster to kick start the economy', (January 2025), available at: https://www.gov.uk/government/news/reeves-i-am-going-further-and-faster-to-kick-start-the-economy

The National Security & Investment Act

The NS&I Act came into force on 4 January 2022, replacing the previous public interest intervention system under the Enterprise Act, 2002. The NS&I Act significantly extended the UK government's authority to investigate transactions which threaten or could threaten the UK's national security.

The NS&I Act covers investments from both foreign and domestic investors in UK businesses as well as certain businesses outside the UK. It also covers a broad spectrum of sectors and is administered by the Investment Security Unit (the **ISU**) within the Cabinet Office.

There are three key aspects of the NS&I Act:

- The requirement to make mandatory notifications for investments in entities active in one of 17 prescribed sectors and suspend closing until clearance is received.[6]
- The government's ability to call in non-notified transactions for up to five years after closing (or six months from the Secretary of State becoming aware of the transaction).
- The option to submit voluntary notifications for transactions that are not subject to mandatory notification but may still be called in for review under the government's call-in powers.

There are no notification thresholds or any safe harbours with respect to the target's turnover or any other materiality threshold under the regime. As such, even transactions with very limited connections to the UK may be caught by the regime. In addition, even internal corporate restructurings, where ultimate control remains unchanged, can be caught.

Given the broad range of sectors, transactions and investors covered by the NS&I Act, a relatively high number of notifications (906) were submitted in the 2023-2024 financial year, with 753 mandatory notifications, 120 voluntary notifications and 33 retrospective validation applications.[7] This is significantly higher than the number of notifications filed in similarly sized European counties such as Germany and France, which each received approximately 300 notifications. All of the notifications submitted under the NS&I Act were subject to a review of at least one month by the ISU. Of the transactions reviewed, 95.6% were cleared without need for a further in-depth review.[8]

6 The 17 sectors are: Advanced Materials, Advanced Robotics, Artificial Intelligence, Civil Nuclear, Communications, Computing Hardware, Critical Suppliers to Government, Cryptographic Authentication, Data Infrastructure, Defence, Energy, Military and Dual-Use, Quantum Technologies, Satellite and Space Technologies, Suppliers to the Emergency Services, Synthetic Biology, and Transport.

7 GOV.UK, 'National Security and Investment Act 2021: Annual Report 2023-24', (October 2024), avail https://www.gov.uk/government/publications/national-security-and-investment-act-2021-annual-report-2023-24/national-security-and-investment-act-2021-annual-report-2023-24-html

8 Ibid

The recent Cabinet Office Report on the NS&I Act (Notifiable Acquisition Regulations - NARs) published on 19 December 2024, reviewed the regime and analysed areas of potential improvement in relation to the 17 sensitive sectors covered by the NARs, which prescribe when a target entity falls within scope of mandatory notification on a relevant change of control.[9] Overall, the report found that the NS&I Act and the NARs in particular were working well and met their objectives. Nonetheless, the report concluded that the NARs could be improved by, for example:

- covering additional areas in Artificial Intelligence (AI) and Data Infrastructure
- narrowing certain areas such as the use of AI in agricultural production
- clarifying the NARs and providing further guidance in some areas.

In addition, further to the government's response in April 2024 to its call for evidence on the operation of the NS&I Act, it has confirmed that it will consult on updating the 17 strategic sectors.[10] Although there has been a change in political leadership since the publication of the response, a number of the recommendations and actions identified have not yet been acted upon, despite extensive stakeholder feedback.

It would be remiss not to note that there have been significant improvements and greater clarity provided since the commencement of the NS&I Act. Nevertheless, the government has recognised that more can be done to fine tune the regime in order to provide more certainty of process and predictability of outcome.

It is also important to acknowledge why this matters to both business and the UK as an investment destination. By capturing many unproblematic transactions, the regime places a meaningful administrative burden on the parties involved in these transactions. All parties involved in a transaction that is notified must factor in more than a month to their deal timelines to ensure compliance with the NS&I Act's notification requirements, with risks to the success of what may be a time-limited business opportunity. In addition, businesses require certainty on regulatory decisions affecting their transactions, and clarity on whether a transaction is likely to raise national security concerns (particularly where a mandatory notification is not required). The importance of these considerations is heightened by the significant consequences for non-compliance (which include criminal sanctions) and the effect that they have on the competitiveness of the UK as an investment location. Finally, the potential to reduce government spend under the NS&I Act without undermining the protection of national security also needs to be considered.

9 GOV.UK, 'Report on the NSI Act Notifiable Acquisition Regulations', (December 2024), available at: https://www.gov.uk/government/publications/report-on-the-nsi-act-notifiable-acquisition-regulations

10 GOV.UK, 'National Security and Investment Act 2021: Call for Evidence Response', (April 2024), available at: https://www.gov.uk/government/calls-for-evidence/call-for-evidence-national-security-and-investment-act/outcome/national-security-and-investment-act-2021-call-for-evidence-response

Comparison of the key features of other FDI regimes

Given that the UK is seeking to attract investment in a competitive global environment, a comparative analysis of other FDI regimes should inform an assessment and refinement of the NS&I Act and its application. In order to review peer regimes, Freshfields chose a variety of jurisdictions to gain a broad view of the world-stage, including the most frequently encountered jurisdictions by businesses undertaking global deals as well as jurisdictions with particularly interesting features. These jurisdictions provide a useful set of comparators against which to assess the UK's regime. The jurisdictions assessed are set out in Annex A.

Metric 1: Definitional triggers – protecting national security vs protecting other interests

UK position	Focused on national security issues, although no definition of national security
Best practice in assessed jurisdictions	US: Focused on national security – although there is no definition of national security, the authorising legislation provides that it includes homeland security and critical infrastructure. There is also significant guidance on how CFIUS interprets the concept.
Other practices in assessed jurisdictions	AUSTRIA: The legislation covers sensitive sectors where a threat to security or public order arises.[11] CANADA: Generally, investments by non-Canadians in Canadian businesses, or the creation of new Canadian businesses by a non-Canadian are covered.

FDI regimes in some jurisdictions, such as the US and UK, cover transactions which could raise 'national security' concerns – thus providing an appropriate limitation on the scope of the regime (although the line between national security and wider 'economic security' considerations can sometimes be blurred). Other jurisdictions, including a number in Europe, explicitly cover not only national security but also broader risks concerning economic and public security. Others, such as Canada, are even broader – foreign investments in any sector are subject to review under the applicable laws.

A more targeted approach, such as the US and UK regime, does help narrow the focus to transactions which could raise national security concerns rather than broader economic or political priorities, which can be extremely wide and diffuse. However, particularly in the current geopolitical and technological environment, the scope of transactions raising potential national security concerns has become extremely broad and without a clear definition of national security,[12] there is the potential for the scope to widen even further.

In this regard, the lack of clarity regarding the boundary between national security on the one hand, and broader economic or political concerns on the other, leads to uncertainty. It also raises the risks of politicisation which may result in the imposition of conditions which do not legitimately have the purpose of protecting national security.

Metric 2: Transaction types and exceptions

2(a) Local nexus

UK position	Covers entities which carry on activities in the UK or supply goods or services to persons in the UK
Best practice in assessed jurisdictions	AUSTRIA: Covers any entity which is a permanent organisation of independent economic activity which has its registered office or headquarters in Austria. This does not include branch offices with no legal personality. FRANCE: Covers entities which are governed by French law, registered with the French commercial registry (including a French branch of a foreign entity), all or part of a branch of activity of an entity governed by French law. GERMANY: Covers German entities, German subsidiaries of a foreign entity, German branches of a foreign entity with independent German management and all essential operating resources of a German company (or relevant part thereof) that are necessary to maintain the operation of the company. SPAIN: Covers Spanish entities, Spanish subsidiaries of a foreign entity, Spanish branches of a foreign entity, as well as assets businesses with local presence (import sales are not sufficient). The regime does not cover entities which have no subsidiaries or local presence in Spain.
Other practices in assessed jurisdictions	CHINA: Covers any investment activity carried out by a foreign investor within China.

For a target to be caught by the NS&I Act, it merely needs to carry on activities in the UK or supply goods or services to persons in the UK. Therefore, transactions and targets with very limited nexus to the UK can be caught. This approach appears to stem from the approach to jurisdiction under the UK's competition law regime which is based on the effects doctrine (i.e. any transaction that can have any effect in the UK can in principle be caught).

In contrast, almost all other regimes only cover targets with a direct nexus to the country in question – and thus a greater likelihood of being targeted at transactions which could have a material domestic impact. For example, in Austria, a target is caught where it has a registered office or headquarters in Austria; the French FDI regime's applicability is limited to entities which are governed by French law, have a branch which is registered with the French commercial registry, or constitute all or part of a branch of activity of an entity governed by French law; in Germany, only German entities, subsidiaries, branches with independent German management and essential operations of German entities are covered; while in Spain, the FDI regime will not apply if the target has no subsidiary or local presence in Spain (e.g. assets, branches or commercial offices).

11 A threat to security or public order is the standard under the EU screening regulation (Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (Regulation - 2019/452 - EN - EUR-Lex)) which most EU Member States use.

12 It is worth noting that Article 346 of the Treaty on the Functioning of the European Union (TFEU) adopts a strict (and helpful) standard of national security, namely "the essential interests of [national] security which are connected with the production of or trade in arms, munitions and war material".

2(b) Monetary thresholds

UK position	No monetary thresholds
Best practice in assessed jurisdictions	AUSTRALIA: In many cases, a foreign person will need to notify their investment only if the investment meets certain monetary thresholds. The thresholds depend on the type of investor and the investment being made. AUSTRIA: There is a de minimis threshold for entities which have fewer than 10 employees and an annual turnover or annual balance sheet total of less than €2m. No notifications are required for investments in these entities. ROMANIA: No mandatory notification is required if the foreign investor invests less than €2m.
Other practices in assessed jurisdictions	US: No monetary thresholds. GERMANY: No monetary thresholds such as turnover or transaction value.

Unlike in a number of other regimes, the UK regime does not contain any monetary thresholds related to the size of the investment or the consideration payable – all investments are potentially captured by the regime. This means that even very small transactions can be caught and the parties required to prepare and submit a notification.

Other regimes take a more targeted approach. In Australia, the regime contains monetary thresholds for notifications in a number of cases which depend on the nature of the investor and the action proposed to be taken by the investor. In other jurisdictions, such as Romania and Austria, there are de minimis requirements for the investment in order to be captured by the mandatory notification requirements under the regime.

2(c) Transaction structures

UK position	Wide range of investments are covered which includes internal reorganisations. Greenfield investments and the appointment of administrators are excluded
Best practice in assessed jurisdictions	FRANCE: Regime contains an exemption where the ultimate controlling shareholder had, prior to the investment, control of the French entity. Therefore, internal reorganisations are excluded. SPAIN: Internal restructurings and an increase in the shareholding of an investor which already holds more than 10% shareholding and that does not entail a change of control are excluded.
Other practices in assessed jurisdictions	CHINA: Any direct or indirect investment activity is covered, including greenfield investments to initiate a new project or establish a new enterprise in China, the acquisition of equity interest or assets of an enterprise in China, as well as other structures. US: Covers a broad range of transactions, namely transactions which result in (i) the acquisition of direct or indirect control of a US business (covered control transactions), (ii) less than controlling investments that include access to material non-public technical information, board membership (including board observers), or involvement in substantive decision-making regarding sensitive data, critical technologies or critical infrastructure where the US business is a so-called TID US business (covered investments), and (iii) purchase or lease of real estate located within airports and maritime ports or close to a US military installations (covered real estate). Internal reorganisations are not exempt.

The UK regime covers a very wide range of transactions, including internal restructurings. This has been a persistent point of criticism of the regime, requiring notifications (and suspension of the restructuring until clearance is received) for even minor internal restructurings where ultimate control remains entirely unchanged. The regime does not, however, cover greenfield investments or the appointment of administrators.

Other jurisdictions exclude certain types of transaction structures on the basis that they are unlikely to lead to any sort of national security risk. For example, the French FDI regime contains an exemption for transactions where the ultimate controlling shareholders had, prior to the investment, control over the French target. Under this approach, internal reorganisations are excluded from the application of the regime provided that (i) the purpose of the investment is not to transfer abroad all or part of a 'branch of activity' of a French company, or (ii) the investment has not the effect of preventing an investor from complying with FDI conditions previously imposed by the authority.

Metric 3: Economic activity and sectors covered

UK position	The mandatory regime applies to investments in any of the 17 strategic sectors. Transactions in any sector can be called-in if they may give rise to a risk to national security (this concept is not defined)
Best practice in assessed jurisdictions	AUSTRALIA: Covers all sectors but higher notification thresholds apply to investments in less sensitive sectors or by less sensitive investors. AUSTRIA: For investments in particularly sensitive sectors, authorisation is required if more than 10%, 25% or 50% of the voting shares is acquired. For all other sectors, authorisation is required if 25% or 50% of the voting shares is acquired. GERMANY: Under the cross-sector review, there is a tiered system – for certain sectors a notification is required where an investor is acquiring 10% or more of the voting rights and for other sectors, a notification is only required where an investor is acquiring 20% or more of the voting rights.[13]
Other practices in assessed jurisdictions	CANADA: Foreign investment across all sectors of the economy is subject to the regime.[14] US: CFIUS's control jurisdiction is not limited to any specific sectors.

Under the NS&I Act, the mandatory notification regime covers entities active in one (or more) of the 17 sensitive sectors of the economy, as set out in the NARs. The sectors covered range from typical national security related sectors (for example, military and defence) to critical infrastructure (for example, emergency services, energy and transport) and advanced technologies (for example, artificial intelligence and advanced robotics). In addition, the UK government has the discretion to call-in any qualifying acquisition that falls outside the mandatory notification regime and which the Secretary of State reasonably suspect risks national security. This includes investments in targets operating outside the 17 sensitive areas. The regime is, therefore, effectively economy-wide in scope.

There are a number of jurisdictions with FDI regimes which explicitly cover all economic activities and sectors, such as Canada and the US. Under these regimes, foreign investments in any sector can be caught by the respective regimes. Other jurisdictions set out specific sectors which are sensitive and for which notifications are required. These sectors tend to cover critical national infrastructure, national security and defence, energy, transport, telecommunications, technology, and sectors with access to or control of sensitive information. Each country has different definitions of their sensitive sectors and therefore the scope of the regimes can vary hugely.

Some jurisdictions set out different levels of sector sensitivity which have different criteria to fulfil in order to determine whether a notification is required. For example, in Germany, for certain sensitive sectors, a notification is mandatory if an investor acquires 10% or more of voting rights in the German target, whereas for other sectors, a notification is only mandatory where an investor acquires 20% or more of voting rights in the German target. Similarly, in Australia, for all but specific investments in the most sensitive sectors of the economy or by certain sensitive investors, there are monetary thresholds which must be met or surpassed for a notification to be mandatory. These thresholds change depending on the sector and investor. In Canada, while all sectors are caught under the foreign investment regime, if the applicable thresholds are exceeded, an investment will require a pre-closing filing and must be approved by the Canadian government before closing on the basis that the investment is of 'net benefit' to Canada; where the review thresholds are not exceeded, the filing can be made prior to or up to 30 days post-closing. However, once implemented, recent amendments to the Investment Canada Act will introduce a new pre-closing mandatory filing requirement for specified investments by non-Canadians in certain to be defined sensitive business activities to enable the national security screening or review to occur pre-closing.

Metric 4: Treatment of foreign investors

UK position	Applies to investments by both domestic (i.e. UK) and foreign investors (agnostic as to the nationality of the investor)
Best practice in assessed jurisdictions	FRANCE: Applies to non-French investors. Notification thresholds in terms of the interests acquired differ depending on whether the investor is an EU / EEA investor or not. GERMANY: Applies to German investors only if they have large non-German shareholders. Treatment under the regime differs depending on whether the investor is from the EU / EEA or outside the region.
Other practices in assessed jurisdictions	ITALY: Applies to both Italian and non-Italian investors, but - for sectors other than the defence sector – there are different notification thresholds depending on whether the investor is EU (including Italian) or non-EU. ROMANIA: Applies to investments whether originating from foreign or EU investors (including domestic ones), although certain provisions only apply to non-EU investors.

The UK is one of the very few jurisdictions assessed which applies its regime to investments by both domestic and foreign investors.

In Italy, for sectors other than the defence sector (in relation to which both EU and non-EU investors must notify the acquisition of any shareholding exceeding 3%), EU (including Italian investors) and non-EU investors are generally required to notify acquisitions of a controlling interest in a target active in a relevant sector (while non-EU investors are generally required to notify the acquisition of a stake higher than 10% where the value of the investment exceeds €1m). In Romania, investments exceeding €2m in one of 13 sensitive sectors, whether originating from foreign or EU investors (including purely domestic ones) require notification in general. In this regard, these regimes are unusual in that they do not cover only foreign investment (and are thus not, in essence, foreign investment regimes).

13 The general investment review can be used to screen any acquisition of 25% or more of the voting rights in a German company by a non-EU or non-EEA investor.

14 As noted below, upcoming changes to the Investment Canada Act will increase the filing requirements for investments in Canadian businesses that carry out to be defined sensitive business activities to ensure national security screening of such investments occur prior to closing.

While the regimes of most of the other jurisdictions assessed apply only to foreign investors, certain regimes treat foreign investors (as between each other) differently depending on the identity of the foreign investor.

For example, the Australian regime has a higher monetary threshold for investors from countries with which Australia has a free trade agreement, for example, the US. In the US, 'excepted investors' with sufficiently close ties to 'excepted foreign states' (currently, Australia, Canada, New Zealand and the UK) are not subject to mandatory filing rules or CFIUS's jurisdiction over covered investments and covered real estate, although CFIUS can still review the acquisition of control by an excepted investor. The recently issued 'American First Investment Policy' memorandum establishes an unambiguous open investment policy in the US with respect to investors from allied and partner countries while outlining further restrictions on inbound and outbound investment to and from China and other so-defined foreign adversaries. Under this policy, the US will create an expedited 'fast-track' process to facilitate greater investment from specified allied and partner sources in US businesses to allow for increased foreign investment subject to appropriate security provisions.

In France, for EU / EEA investors, a notification is only required for the acquisition of a direct or indirect controlling interest in a French entity or branch, an establishment registered to the French commercial registry (a French branch of a foreign entity) or the acquisition of all or part of a branch of activity of a French entity, whereas for non-EU / non-EEA investors, a notification is required for the crossing, directly or indirectly, alone or in concert, of the threshold of 25% of the voting rights of an entity governed by French law and the crossing, directly or indirectly, acting alone or in concert, of the threshold of 10% of voting rights of a French company listed on a regulated EU or EEA market. In Germany, the authority can call-in any non-EU / non-EFTA investor who has invested 25% or more of the voting rights in a German entity for up to five years after the signing of the transaction – there is no similar call-in power for EU / EFTA investors. In Italy, the FDI regime contains a reciprocity principle – a non-EU investor is allowed to invest in an Italian company on the same terms as would be applicable to an Italian investor intending to acquire shares or assets relating to an undertaking in the country of the foreign investor.

Metric 5: Timelines

UK position	**Pre-closing clearance required for mandatory transactions. A two-phase system is in place with statutory timeframes of 30 working days for the initial screening, and 30 working days for a full review (with a possible extension of 45 working days). Stop the clock provisions are also in place which, in practice, can mean that reviews are much longer. The government also has call-in powers for transactions outside the mandatory sectors**
Best practice in assessed jurisdictions	GERMANY: A two-phase system is in place with statutory timeframes of two months for the initial screening, and four months for an in-depth review. Both phases can be extended. US: Parties can elect to complete a short-form declaration which has a shorter statutory timeline (30 calendar day assessment) rather than a long-form notice (45 calendar day assessment), both from the date of acceptance of the filing.
Other practices in assessed jurisdictions	AUSTRIA: The regulator must notify the European Commission to start the European cooperation mechanism – the Commission and Member States have 35 calendar days to respond. After the consultation period expires, the regulator has one month to clear the transaction or initiate an in-depth investigation. There is then another two month period in which a decision must be made. CANADA: If only a notification is required (i.e. the review thresholds are not met), the notification may be submitted up to 30 days post-closing. Where a transaction is subject to a net benefit review, the application must be made pre-closing and the parties are barred from closing until and unless the investment is approved by the Canadian government (typically a 75 day timeline). National security reviews can take 45-230 days following filing, typically in increments of 45 days. If a national security review is extended beyond 45 days it becomes suspensory for investments that have not yet been completed.

Under the NS&I Act, clearance for a mandatory transaction must be obtained before closing. A transaction falling out of scope of the mandatory regime but in scope of the regime's broader remit, does not require clearance before closing but remains subject to the government's 'call-in' powers and, if called in, risks of hold-separate orders being imposed during a review and a divestment order at the end of a review. Parties may therefore seek clearance by using the voluntary notification regime.

The government has an initial review period of 30 working days to assess a notification and either approve it unconditionally or call it in for a full national security assessment. If the government decides to 'call-in' the transaction for a full national security assessment, it has 30 working days to finalise its assessment (which may be extended by up to 45 working days and a further voluntary period). During the full assessment period, the government can stop the clock if it issues an information or attendance notice, until such time as the requested information is provided. In practice, information requests during full assessments are very common, with the result that assessments often last several months and the timing of a final decision can be unpredictable. There are no fast-track procedures.

Of the jurisdictions analysed, some have mandatory pre-closing notifications while some have post-closing notifications. In Canada both post-closing notifications (in circumstances where the investment is below a certain monetary threshold) and pre-closing notifications are provided for. Similarly, the number of days for investigations ranges depending on jurisdiction. In Italy, the review period is 45 calendar days (30 calendar days for notifications relating to the 5G sector) which may be extended. In Australia, the decision period is 30 calendar days, but this may be extended for a period of up to 90 calendar days.

In addition, some jurisdictions have fast-track mechanisms. In the US, a short-form declaration can be made, the completion of which triggers a 30 calendar day assessment at the end of which the government can decide to clear the transaction, initiate a review, request a full notification or issue a no-action letter. In contrast, the long-form notice triggers a 45 calendar day review period at the end of which a clearance letter must be given or a 45 calendar day investigation period announced. The parties may elect either long-form notification or short-form declaration, however, short-form declarations are more suitable for known foreign investors or simple transactions. The main risk of using the short-form declaration is that CFIUS may conclude its review with a request for a long-form notice, effectively turning the fast-track into the slowest track by extending the overall CFIUS timeline by at least 30 days. Other jurisdictions, such as Australia, have recently introduced a similar streamlined process, while jurisdictions like New Zealand are considering the introduction of fast-track mechanisms. Some EU jurisdictions, for example, Austria, also integrate the EU screening mechanism into their FDI regimes. Under this mechanism, the Commission and Member States may submit comments to the relevant authority which the authority will take into consideration when finalising their decisions. This extends the timetable of the review periods.

Many (if not most) jurisdictions also have voluntary screening options. For example, in Germany, an investor may apply for a certificate of non-objection, after which a non-objection is provided or the authority may decide whether an in-depth review is warranted. The review period for this is two months, which is the same length of time as the Phase 1 review period for mandatory notifications. However, obtaining a certificate of non-objection provides the parties with certainty that the transaction has been approved and the authority will not exercise its call-in powers in the future.

Finally, many jurisdictions have ‘stop the clock’ mechanisms in place which stop the statutory time period within which to complete the investigation until the authority receives the information requested. In addition to the UK, Germany, Italy and China are among the jurisdictions with this mechanism in place.

Metric 6: Discretion afforded to the decision maker

UK position	High level of discretion,[15] although several considerations must be taken into account when reviewing a transaction
Best practice in assessed jurisdictions	UK: See above (some further guidance from the UK government on how decisions are made and how widely the government can wield their powers with regards to mandatory notifications is required).
Other practices in assessed jurisdictions	CHINA: The security review measures do not contain any detailed factors for the authorities to consider in assessing the impact of a foreign investment to national security. Under Chinese law and practice, the authorities have wide discretion. GERMANY: There are two regimes under which different legal tests apply. Both of these regimes give the authority a wide discretion as to what is considered. ITALY: A number of objective and non-discriminatory criteria are considered, nonetheless the authority’s discretion remains very wide. US: The authority considers whether a transaction may threaten to impair US national security which involves three variables (threat, vulnerabilities and consequences). In the event of a prohibition or deadlock, the decision may be sent to the President who will then make a final decision on the transaction, which may result in a politicised outcome in some cases.

In the UK, when a transaction is being reviewed under the NS&I Act, the Secretary of State (as decision maker) is required to consider whether, on the balance of probabilities, a qualifying transaction has taken place (or will take place) and whether a risk to UK national security has arisen (or will arise). In its statutory Section 3 Statement[16] setting out how it exercises these powers, the government describes three primary risk factors that it considers:

- Whether the target entity may pose a risk to national security.
- Whether the investor’s characteristics suggest a risk to national security.
- Whether the amount of control afforded to the investor creates a risk to national security.

The Section 3 Statement provides a range of examples to illustrate how these risk factors are considered and notes that wider government policy on national security will be taken into account when assessing transactions. However, in line

15 In LetterOne v Secretary of State for Business, Energy and Industrial Strategy [2024] EWHC 2963 (Admin), the High Court confirmed that the UK government has a high level of discretion with regards to determining the outcome of notifications under the NS&I Act. In fact, the judgment specifically notes that “the court will treat as axiomatic that Parliament has entrusted the assessment of risk to national security to the executive and not to the judiciary.” There is a high degree of deference, and therefore power, afforded to the government when considering NS&I Act issues.

16 National Security and Investment Act 2021: Statement for the purposes of section 3, 21 May 2024 National Security and Investment Act 2021: Statement for the purposes of section 3 - GOV.UK

with government policy to ensure national security powers are sufficiently flexible to protect UK interests, neither the legislation nor the Section 3 Statement define national security or set out an exhaustive list of circumstances in which national security may be at risk. The High Court has also recently confirmed that there is a high level of discretion and deference afforded to the government in matters of national security.

In the US, the authority considers three variables: threat, vulnerability, and consequence. CFIUS has wide discretion in determining what mitigation remedies are necessary to mitigate the risk(s) it identifies in a transaction, but only the President has the authority to prohibit transactions. If the Committee determines that prohibition is necessary or cannot come to consensus on either the risk(s) or the mitigation remedies necessary to address the risk(s), the transaction is sent to the President who will then make a decision, which may result in a politicised outcome in some cases (for example, former President Biden's block of Nippon Steel's acquisition of US Steel). In Spain, the authority considers whether the transaction affects or may affect activities which, by their nature, form or conditions, affect or may affect activities related, even if only occasionally to the exercise of public power, or activities directly related to national defence or activities that affect or may affect public order, public safety and public health. In some cases, the investor's profile is a crucial factor in the assessment, even if the transaction does not involve sensitive activities in Spain. The breadth of this legislation provides the authority with significant discretion as to the review of any given transaction.

In Germany, there are two regimes which have different legal tests to apply. Under the cross-sectoral regime, the authority tests whether an investment is "likely to affect public order or security in Germany, another EU Member State or projects of EU interest". Under the sector-specific regime, the authority tests whether an investment is "likely to affect Germany's essential security interests". Again the authority has a wide discretion as to what is considered under both of these regimes.

While all of the above regimes have a wide discretion, the Italian FDI regime seems to be particularly wide. Under this regime, the Prime Minister's Office carries out the review based on a number of "objective and non-discriminatory criteria" to determine whether the transaction entails a threat of serious prejudice to the essential national interests of Italy in any of the relevant sectors. Nonetheless, the Prime Minister's Office retains a very broad discretion in determining whether a transaction is caught by the regime and the outcome of the notification. This makes the Italian FDI regime highly politicised.

The decisions of the authorities in most jurisdictions are subject to judicial review. However, in practice, judicial reviews of FDI decisions have been very limited.

Metric 7: Consequences of non-compliance (penalties and transaction effects)

7(a) Civil penalties

UK position	Financial penalties and daily rate penalties may be applied
Best practice in assessed jurisdictions	FRANCE: The fines which can be imposed for implementing a notifiable transaction prior to receiving clearance are up to the highest of (i) double the amount of the investment, (ii) 10% of annual turnover of the target, or (iii) €5m for a legal entity or €1m for an individual. Therefore, any fine imposed can be easily adapted to the size of the transaction.
Other practices in assessed jurisdictions	CANADA: Implementing a reviewable transaction before clearance is obtained can result in the imposition of a fine of up to CAD 25,000 for each day that the investor is in contravention of the legislation.

In the UK, the parties face the imposition of financial penalties of up to the higher of £10m or 5% of worldwide turnover for non-compliance, including completing a notifiable transaction prior to obtaining approval. This can include a 'daily rate' fine (of up to £200,000 or 0.1% of turnover per day). Although the UK government has not to date reported penalties for non-compliance with the NS&I Act, parties are subject to regular compliance obligations, and it is likely only a matter of time before penalties are imposed.

In most of the jurisdictions compared, there are financial penalties for proceeding with a deal without obtaining the requisite authorisation, or for failing to comply with any interim or final orders.

In France, fines which can be imposed for implementing a notifiable transaction prior to receiving clearance are up to the highest of (i) double the amount of the investment, (ii) 10% of annual turnover of the target, or (iii) €5m for a legal entity or €1m for an individual. In Spain, an investment made without the required approval may carry a fine of between €30,000 up to the financial value of the transaction. In Italy, the authority can impose fines of up to 1% of the global cumulative turnover of all parties involved or up to twice the value of the transaction. Along with the UK, these regimes provide some certainty around any fine which may be imposed. In Europe, many regimes are still new and have yet to establish consistent enforcement practices. However, most governments actively monitor compliance and are increasingly investigating suspected breaches.

The Canadian authorities can impose a penalty of up to CA$25,000 for each day that the investor is in contravention of the legislation, and under the recent amendments to the Investment Canada Act, will be able to impose fines of up to the greater of CA$500,000. In other jurisdictions, the fines can reach up to the value of the transaction. In the US, the penalties for the failure to submit a mandatory notification potentially have a much greater range – the greater of $250,000 per violation or the value of the transaction. CFIUS has also increased its enforcement of penalties: in 2023 alone, CFIUS imposed four penalties – double the total since it gained penalty authority in 2007.

7(b) Criminal penalties

UK position	Criminal sanctions for non-compliance include imprisonment of up to five years and disqualification of up to 15 years as a director
Best practice in assessed jurisdictions	SPAIN: There are no criminal sanctions for non-compliance.
Other practices in assessed jurisdictions	GERMANY: Intentional breach of the standstill obligation is a criminal offence which may result in up to five years imprisonment. FRANCE: Any infringement may be subject to criminal penalties including up to five years imprisonment.

The UK regime provides for criminal sanctions for non-compliance (including completion of a notifiable transaction without approval, non-compliance with an order, or non-compliance with a requirement to provide information), with penalties including fines, imprisonment and disqualification as a director. The government has confirmed that criminal prosecutions will usually be considered only in the most serious of matters. No prosecutions have been reported to date.

In other jurisdictions, taking actions such as the acquirer exercising voting rights connected to the acquisition or the target sharing certain data with the acquirer may also constitute a criminal offence. In Germany, this breach may result in up to five years imprisonment or a criminal fine. In practice, no criminal sanctions have been applied so far and the government is considering removing them.

However, in many other jurisdictions such as Spain, China and Canada, there are no criminal sanctions for non-compliance with conditions or completing prior to obtaining FDI clearance. This lack of criminal penalties does not appear to have impacted the effectiveness of these regimes, or the level of compliance with the legal requirements.

7(c) Transaction effects

UK position	Any transaction which is completed without the required clearance is void
Best practice in assessed jurisdictions	GERMANY: Any transaction subject to mandatory review is invalid until clearance. SPAIN: Any notifiable transaction is deemed invalid and will not have any legal effect in Spain until clearance.
Other practices in assessed jurisdictions	FRANCE: Any transaction which is completed without the required clearance may be deemed null and void.

In the UK, if a transaction requiring mandatory notification is completed without approval, the transaction is automatically void. This means that the transaction is invalid from the outset, and any payments made or property transferred are reversed and become recoverable, as neither party has the contractual entitlement to what they have received. The regime provides a mechanism for parties to apply for retrospective validation, with an initial review period of 30 working days and limited scope for fast-track.

Similarly, in Austria, any notifiable investment carried out without the relevant clearance is void, and in France, such an investment may be deemed void. In Spain, if a transaction is completed without the necessary approval, it is deemed invalid and will not have any legal effect in Spain until the required authorisation is obtained. However, Spanish law only prohibits the investor from being able to exercise economic and voting rights in the Spanish entity until clearance is obtained. In Germany, the transaction is legally void until clearance has been obtained. However, German law only prohibits the investor from being able to exercise voting rights and economic rights, and equally, the target cannot share certain sensitive information with the investor. The consequences in Germany and Spain are less disruptive to businesses than voiding of the transaction.

Metric 8: Transparency

At the outset, we note that transparency is a broad term. For the purposes of this paper, we use the term transparency to cover (i) certainty and clarity surrounding a regime e.g. which transactions are caught, and information about the authority's process, substantive assessment and decision making; and (ii) access to and engagement with the decision maker prior to and throughout the review process.

We also recognise that transparency is a difficult metric to compare across jurisdictions. However, we have included what information is available based on publicly available resources and discussions with experts in the relevant jurisdictions.

8(a) Certainty over the scope and outcomes of the regime

UK position	Guidance around whether a transaction is caught by the regime and the outcomes of reviews is unclear. While guidance on the NARs is useful, ambiguity remains around the application of the definitions in practice.
Best practice in assessed jurisdictions	ROMANIA: FDI decisions are now being published by the authority on its website.
Other practices in assessed jurisdictions	GERMANY: Outcomes are not published. ITALY: Decisions are not public and there is no official database of decisions which provide a full description of the commitments imposed.

In the UK regime, the following elements are most notable:

- Due to some areas of ambiguous wording in the NARs, it is not always clear whether a transaction is subject to the mandatory notification regime. Certain definitions of the sensitive sectors as set out in the NARs are open to interpretation and difficult to apply in practice. They are also highly technical in certain places.
- The government also publishes very few details on the conditions imposed on parties if national security risks are identified. Notices of final orders provide very high-level details of the nature of the national security risk and the conditions imposed on the parties to mitigate that risk. The government does not routinely publish details of transactions that are cleared without conditions (either with or without an in-depth review), except for high level statistics published in the annual reports.

Of the jurisdictions compared, concerns around transparency appear frequently, and suggestions have been made to improve transparency accordingly. The EU has recognised that transparency is an important issue and provides some key requirements around transparency of rules and procedures for national screening mechanisms. Many jurisdictions provide guidance on the scope of their regimes and others are in the process of providing further clarification.
In Romania, guidance clarifying the meaning of various essential concepts of its FDI regime is progressing and is anticipated to come into force in later this year, and further guidance on the 13 sensitive sectors is eagerly awaited. Nonetheless, there remains opaqueness around how decisions are made as very little information is published with regards to decision-making and results. China and Germany do not publish any data relating to the outcome of their investment reviews. That being said, generally, other jurisdictions in the EU provide more information around the definition of their strategic sectors.

8(a) Access to decision maker

UK position	Limited access to the ISU pre-notification and during the initial review. More access to the ISU after call-in, but no/minimal access to ultimate decision maker (Secretary of State).
Best practice in assessed jurisdictions	GERMANY: The authority regularly engages in informal discussions with the parties prior to and during proceedings and actively encourages company representatives to contact them with any questions they have. Case handlers are easily contactable and can be transparent with regards to their internal procedures. SPAIN: Informal discussions can start early in the process, even if the parties have not entered into a binding agreement. The authority is flexible and is typically open to discuss a broad range of topics, including jurisdictional and substantive issues, tentative timelines for review, and preferred approach to the filing. The authority provides informal guidance on the regime, its interpretation of certain rules, as well as on queries concerning specific transactions.
Other practices in assessed jurisdictions	ITALY: While the authority is amenable to informal discussions with parties in relation to transactions involving the acquisition of well-known strategic companies, informal discussions are not common. Where informal discussions do take place, they are right before the transaction is signed and generally concern the content to be included in the formal notification and/or the date by which the notification will be submitted. US: The authority does engage in informal consultations at any time before or during the process, however, these generally tend to be one-way briefings from the parties. The authority does not provide informal or advisory opinions, whether on process or substance.

In the UK, the following elements are the most notable:

- Although parties do have an opportunity to seek informal guidance from the ISU prior to submitting a notification, the scope of this engagement is generally limited to technical interpretations of whether there is a notifiable transaction, rather than whether any national security issues could arise. In addition, any guidance provided during these discussions is non-binding.
- When the notification process has begun, there is limited contact between the parties and the ISU until a transaction has been called-in for in-depth review. Many have noted the difficulty in reaching out to the ISU, for example, that no direct email address or phone number is provided to contact the case team. This makes engaging in informal dialogue, even around updates on the notification process, very difficult.

In Germany, the authority regularly engages in informal discussion with the parties before and during the FDI proceedings and actively encourages company representatives and lawyers to contact them with any questions. The authority is willing to discuss a range of topics, including whether a target company belongs to a relevant sector, how

a procedure can be sped up to get a decision by a certain date (they are willing to shorten internal deadlines on good cause shown), and how a question should be interpreted or how it could be responded to. Some case handlers are also transparent with parties regarding the internal procedures, for example, when their internal deadlines are, what feedback they have received from which authority, and what is still outstanding. Informal discussions can take place via email or phone.

Similarly, in Spain, the authority is typically willing to engage in informal discussions with parties (i) subject to an FDI filing, and (ii) who are still assessing whether a filing is required or not. The Spanish authority is very flexible, and it is typically open to discuss a broad range of topics, including jurisdictional and substantive issues, tentative timelines for review, and preferred approach to the filing (consultation vs formal notification).

In Italy, on the other hand, whether informal discussions take place depends on the transaction and whether the target is a well-known strategic company. If the target is a well-known strategic company, the authority is amenable to informal discussions. These discussions tend to happen just before the transaction is signed and concern the content to be included in the formal notification and/or the date by which the notification will be sent to the Italian Prime Minister's Office, with any feedback tending to be at a high level.

In the US, while informal discussions are possible and can focus on substance and process, these discussions tend to be one-way briefings by the parties. The authority may offer veiled commentary on risks or certain topics but does not generally provide a substantive view.

Policy recommendations

How the UK can adopt international best practice to improve the efficiency of its regime

A comparative assessment of FDI regimes underlines that there are many areas in which the UK's NS&I regime is functioning well. The NS&I Act provides a largely predictable regime which is not as politicised as regimes elsewhere.

However, it is also clear that there are best practice features of other regimes that could be harnessed to improve investors' experience of, and confidence in, the UK's regime. We believe these recommendations would support the government's objective of boosting economic growth and investment, while upholding the national security imperative. Our recommendations would also reduce the administrative burden on the government, thus saving both time and money.

1. Increase transparency and dialogue regarding the process

(a) Define strategic sectors more precisely

The definitions of the 17 strategic sectors as set out in the NARs can be improved. Defining the strategic sectors with increased specificity would provide greater certainty to businesses regarding whether their investments will be caught by the NS&I Act. Currently, given the serious risks for non-compliance, a number of businesses are making notifications on a cautionary basis (i.e. without knowing whether their transactions do indeed fall within the scope of the mandatory notification requirements). Better guidance on the 17 strategic sectors would result in improved certainty and greater investor confidence as well as reducing the burden on the government of reviewing a large number of notifications unnecessarily.

(b) Provide more transparency over the decision making process

As noted above, very few details on the government's decisions under the NS&I Act are provided. This means that businesses have little precedent from which to assess (i) whether the government would consider their transaction as falling within the regime (particularly bearing in mind the non-binding nature of the informal guidance provided by the government to parties), and (ii) how the government actually assesses the risk to national security. This could be addressed by:

- Publishing more complete non-confidential decisions online.
- Issuing comprehensive and updated guidance, explaining the government's decision making process, with reference to previous cases as examples.

(c) Introduce earlier engagement between parties and the government

Recognising that there have been improvements in the ability of parties and advisers to engage with the ISU since the commencement of the NS&I Act, there is still little room for early engagement and collaboration. Providing for greater access to the authority up front and during the pre-notification process will provide an opportunity to businesses to resolve any issues efficiently and expeditiously. Earlier and better communication with UK trade envoys in key markets would also assist in addressing concerns by foreign investors and increase the speed of investment.

2. Limit the scope of transactions covered

(a) Exclude internal reorganisations, appointments of liquidators, official receivers and special administrators

The UK government has been reluctant to include these exceptions in the past, noting that it will carry out a 'thorough national security risk assessment' to determine whether the exemption of internal reorganisations is feasible. However, other regimes provide evidence of this exemption working. With regards to the appointment of liquidators, official receivers and special administrators, the previous UK government confirmed in April 2024 that it would bring forward secondary legislation to exempt these appointments, but the current government has not disclosed whether it plans to implement these reforms.

(b) Limit the scope to transactions that have a direct impact on a UK company/branch

The UK is one of only a few jurisdictions where simply sales to UK customers are sufficient to trigger jurisdiction. This means that transactions which have a very limited nexus to the UK are nevertheless caught by the regime. Limiting the applicability of the regime, similar to many other jurisdictions, to provide that the target must have some kind of presence in the UK would improve the regime by removing the need for notifying transactions which have very little potential to harm national security (if at all). This could be assessed by the target, for example, being governed by UK law, being registered in the UK or having subsidiaries in the UK.

(c) Introduce a de minimis threshold for investments with minimal impact in the UK

Similar to the above recommendation, this would remove the need for filings for small investments where there is little threat to national security. This could involve, for example, a de minimis threshold for investments in target entities with an annual turnover of less than £5m or a purchase price less than £5m which operate in less sensitive sectors.

3. Introduce a risk-based fast-track or post-closing procedure to streamline the system

Early in the regime, the UK government recognised that the majority of transactions requiring notification under the NS&I Act are unlikely to raise national security concerns. This has been borne out by the statistics: in the 2023-2024 financial year, 906 notifications were submitted, with 753 mandatory notifications, 120 voluntary notifications and 33 retrospective validation applications. Of the transactions reviewed, 95.6% of were cleared without need for an in-depth review.

The fact that less than 5% of notifications result in a formal call-in notice, and even less require government intervention via a final order, illustrates that the UK regime casts a very wide net over investment activity. It also underlines the opportunity to establish a more proportionate and efficient process for the overwhelming majority of transactions which do not raise national security risks. While reducing the number of unnecessary notifications should be the goal, given the strict penalties for non-compliance with the UK regime, it is likely that investors will continue to take a conservative approach to compliance. Therefore, streamlining the regime is just as important.

Accordingly, a fast-track or post-closing notification process for transactions which are unlikely to raise national security concerns would ensure greater efficiency while ensuring that those transactions which are of concern to the UK's national security are still captured by the regime. This could work in practice in a number of ways. For example:[17]

- **Target risk:** Investments in targets active in sectors which are considered the most sensitive or high risk could continue to be reviewed under the current process, while investments in targets active in less sensitive sectors could be reviewed under a fast-track / post-closing notification process. The areas of the economy associated with the largest proportion of call-in notices in 2023-2024 were the defence (34%) and military and dual-use (29%) sectors.
- **Acquirer risk:** Establishing a preference for investors from certain jurisdictions, for example, those from countries with which the UK has FTA / security agreements. Although this is the simplest process in terms of allocating acquirer risk, we recognise that it is quite blunt and there may be valid reasons for not singling out certain countries. Another option would be to adopt a reciprocity principle – whereby non-UK investors from a given jurisdiction are allowed to invest in a UK company on the same, or preferential, terms as a UK investor would be able to invest in that jurisdiction.
- Alternately, a **tiering system** in terms of the levels of notification and review could be introduced depending on the risk profile of the target and the investor. This could also include a fast-track / post-closing system for repeat investors in businesses in a certain sensitive sector (and are therefore already known to the ISU).

Although concerns may arise in respect of the ability to unwind a transaction found to raise national security risks in a post-closing situation, the concerns could be addressed in ways other than a full unwinding, such as implementing restrictions / control measures post-review.

4. Amend the effect of non-compliance

Transactions which require mandatory notification to the ISU but which are implemented prior to receiving approval should be voidable but not automatically invalid. This approach would align with the approach adopted by UK courts in similar cases and would avoid issues arising concerning listed shares and the adverse effects on listed markets. It would also align with the approach taken in many jurisdictions (including EU jurisdictions): although the consequences of non-compliance in many jurisdictions are described as invalidity, they are in practice voidability.

In addition, it is not clear that criminal sanctions for non-compliance are necessary or proportionate. Although the government has confirmed that criminal prosecutions will generally only be considered in the most serious of matters, it is unlikely that removing the potential for criminal liability would impede the effectiveness of the regime or increase the risk to national security.

17 These are examples which the government may want to consider and industry would be open to consulting on other options which achieve the objective of increasing the speed of the process.

Conclusion

The NS&I Act provides a comparatively predictable regime for international investors and there have been some incremental improvements in the operation of the regime since its adoption. However, by unnecessarily capturing so many transactions which do not raise any national security issues, the regime under the NS&I Act has become an additional cost of doing business in the UK. Given the government's growth priority, a re-examination of the regime is appropriate in order to ensure that regulatory policies aimed at protecting national security do not disproportionality disincentivise much needed investment.

While industry understands and appreciates the importance of protecting the UK's national security, this needs to be balanced with the government's focus on driving growth and reducing regulatory hurdles to much needed investment. The recommendations in this paper provide practical ideas to refine the UK's regime under the NS&I Act so that it can operate in a more proportionate and targeted manner.

Annex A

Jurisdictions analysed

- Australia
- Austria
- Canada
- China
- France
- Germany
- Italy
- Romania
- Spain
- United Kingdom
- United States

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