

# The National Security and Investment Act 2021 (NSIA): the story so far

The national security screening system under NSIA is more than six months old, so there is now greater clarity about how the system works, particularly now that the Secretary of State (SoS) has blocked a transaction. Here are some of the key practical points, based on recent BEIS decisions, guidance and events and our experience of advising on NSIA.

## NSIA Overview

- NSIA gives SoS powers to review certain acquisitions of control which meet specified legal tests and may give rise to a risk to national security.
- The review powers cover all areas of the economy, but acquisitions of entities that carry out activities in the UK in any of 17 sensitive areas (such as defence, civil nuclear and artificial intelligence) must be notified to the Department of Business, Energy and Industrial Strategy (**BEIS**) and receive SoS's approval before they can be completed.
- SoS may "call in" a transaction for detailed review where he reasonably suspects that it may give rise to a national security risk. He can call in a transaction whether or not it has been notified to BEIS.
- Where SoS considers that a transaction may give rise to a national security risk, SoS has wide-ranging powers to impose remedies, such as imposing conditions on a transaction or blocking/unwinding it. If a transaction subject to mandatory notification completes without SoS's approval, it is legally void, though it can be notified retrospectively to seek approval.

## BEIS Market Guidance Notes

On 19 July 2022, BEIS published its first Market Guidance Notes. These include advice on notifications, acquisitions of control and publicity, in particular:

- how much detail parties should provide in the **notification form** – particularly about qualifying entity activities, the use of assets and relevant trigger events;
- when BEIS will accept **one notification for multiple acquisitions** – where the parties are common to all, or there is no overall change in ultimate ownership;
- information on Research Collaboration Advice Team (**RCAT**) contacts for higher education institutions when considering the NSIA's relevance to their work;
- why and when **liquidators and receivers** are within the scope of NSIA;
- that NSIA does not apply to **granting or taking security over shares** (versus enforcing share security), but may apply where granting a share security involves transferring legal title to the secured lender (e.g. creating a share pledge under Scots Law);

- how a minority investor's acquisition of certain **contractual rights** (particularly for early-stage investments) may give that investor "material influence" and result in a voluntary notification or call-in;
- confirmation that **internal reorganisations** are within the NSIA's scope, but will only rarely raise national security risks – for example, when another "link" in the corporate structure is acquiring control, and the ultimate beneficial owner is passive, potentially enabling a hostile actor to pursue malign actions over an entity;
- outlining BEIS's general practice for **publishing NSIA information** – BEIS **must** publish certain information about final orders and **may** choose to publish information about call-ins, interim orders and final clearances; and
- an update on BEIS's ongoing **NSIA review** – so far BEIS has not sought to make any exemptions to mandatory notification, despite requests from stakeholders to do so.

The next set of Market Guidance Notes is due to be published in early 2023. BEIS has asked stakeholders to email [investment.screening@beis.gov.uk](mailto:investment.screening@beis.gov.uk) with potential topics.

### NSIA in practice

- There are no dedicated case handlers – all NSIA communications go to a shared mailbox (but see above for RCAT).
- BEIS will notify parties that their transaction has been cleared as soon as possible after SoS responds to their notification (which may be before the 30 working days review period).
- BEIS will engage with the parties at certain key points in the process (e.g. immediately post call-in), but does not offer meetings otherwise.
- BEIS can request additional information – possibly preventing a call-in, but also “stopping the clock” and potentially delaying the process.
- Cases may be expedited at the parties’ request, but this is rare.
- Only SoS takes the decision on remedies. The parties can make representations about possible remedies, but national security concerns may limit the information BEIS gives them.

### Points arising from NSIA cases

The SoS has recently:

- **blocked a transaction** – the SoS has, through a final order, prohibited Beijing Infinite Vision Technology Company Ltd.’s acquisition of intellectual property rights in vision processing technology from The University of Manchester. SoS considered that the technology (for cameras used in robotics like drones, virtual reality devices and CCTV) has dual-use applications, which could be used to build defence or technological capabilities that risk national security. The transaction is an asset deal which was notified on a voluntary basis;
- **accepted undertakings** – in Viasat/Inmarsat, the parties gave agreed undertakings (for three to five years) including: maintaining core capabilities in the UK; continued ownership by a UK company; creating a UK board of directors (with certain approval rights); establishing UK headquarters; and increasing R&D and jobs in the UK;
- reportedly used **interim orders** to block a transaction pending the outcome of its investigation; and
- made a **final order** to mitigate national security risk – in Sepura/Epiris, the terms of the order ensure the protection of sensitive information and technology, and the maintenance of certain UK capabilities for specified devices used by emergency services in the UK.

### Vital statistics

According to the first **NSIA Annual Report**, between 4 January and 31 March 2022, BEIS has:

- received **222 notifications**. Of these, there were:
  - **196 mandatory notifications;**
  - **25 voluntary notifications;** and
  - **1 retrospective notification;**
- called in **17 transactions** for detailed review;
- accepted mandatory and voluntary notifications within an average of three or four working days of receipt; and
- stayed within statutory time limits for every notification received (i.e. the initial 30 working day review period), except for several transactions currently being investigated.

The next NSIA Annual Report (expected around June 2023) will cover 1 April 2022 to 31 March 2023 and should provide more detail and analysis.

### Key contacts



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