



## THE UK'S NEW NATIONAL SECURITY SCREENING REGIME IS NOW IN FULL EFFECT

A new national security screening regime came into effect on 4 January 2022 which gives the Government the power to assess certain transactions for national security risks. The new rules apply if there is a "change of control" in relation to a wide range of entities or assets and impose mandatory filing obligations for certain investments in entities with specified activities in sensitive sectors.

The following areas are of particular note:

- Certain "changes of control" in entities carrying out specified activities in the UK in certain sensitive sectors (see text box on the next page) must be notified to the Government and a clearance obtained before they can go ahead. Failure to obtain a clearance is a criminal offence, punishable by up to five years imprisonment for responsible directors, executives and other officers, as well as fines for the company. In addition, the transaction itself will be void.
- A "change of control" that is outside of the mandatory notification regime can be called in for review, but the Government has stated that

### Key issues

- The UK's new national security screening regime came into effect on 4 January 2022.
- The Government has new powers to carry out a national security assessment of "changes of control" of entities or assets, including those based overseas.
- Some "changes of control" in particularly sensitive sectors need to be notified before they take place otherwise they are void and can result in criminal liability and monetary penalties.
- Intra-group transactions are caught. Filing may be required, not only for transfers of shares in a subsidiary with sensitive UK activities, but also transfers of shares in the ultimate group parent and any intermediate holding companies, whether or not they are located in the UK.

### "Change of control" triggers for entities

A "change of control" arises if there is an acquisition of a right or interest in an entity which results in any of the following:

- (i) the percentage of the shares held (whether direct or indirect) increases above certain thresholds - 25%, 50% and 75%; or
- (ii) the percentage of the voting rights held increases above the same thresholds; or
- (iii) voting rights are acquired sufficient to secure or prevent any resolution at shareholder meeting.

For call-in purposes, the acquisition of material influence over the policy of the entity is also a trigger.

### "Change of control" trigger for assets

A "change of control" takes place in respect of an asset (only land, tangible moveable property and ideas, information and techniques which have industrial, commercial or other economic value are assets for the purposes of the regime) if a right or interest in the asset is acquired which enables use of the asset or the ability to direct or control its use, or to do so to a greater extent.

transactions are unlikely to be called in unless they concern an entity that carries out activities in or closely linked to the sensitive sectors, or an asset that is used for such activities (or, for real estate, is proximate to a site that is used for such activities). If a transaction is called in, remedies can be imposed to address any national security concerns, including a forced divestment or unwinding of the investment. A voluntary notification can be made to avoid a later call in.

- Parties to transactions involving a "change of control" in the sensitive sectors and those closely linked will therefore need to take account of the regime and consider whether clearance from the Government is mandatory or advisable before the transaction goes ahead. Clearance can take up to 30 working days from the date when the Government accepts the filing as complete, and in some cases a further 30–75 working days. Clearances will therefore need to be factored into deal timetables.
- The regime is not limited to foreign investors or to UK-registered investees. Mandatory filing may apply to changes of control of foreign companies that have UK activities in a sensitive sector (e.g. through a branch) and other transactions may be called in for review if the target company has UK activities or supplies UK customers, or the target asset is used in connection with such activities or supplies.
- Intra-group restructurings involving changes in the direct or indirect ownership of entities subject to the regime may also constitute a "change of control" for the purposes of mandatory notification or call in, even if the only shares that are transferred are those of an intermediate holding company outside the UK, with no change in the ownership of the ultimate owner. Corporate groups are advised to verify proactively whether they have any group company with specified activities in a sensitive sector in the UK and, if so, to implement a mechanism to ensure that no transfers of shares in that company or any of its ultimate or intermediate holding companies can take place without consideration of the need for a national security filing in the UK.

## IN SUMMARY

Much of the legislation is ground breaking in terms of approach and involves some grey areas. In consequence, we expect that the coming months will see new practices develop to adapt to the new regime and until this beds down we anticipate that the new regime will prove to be a discussion point on transactions.

If you require more detailed advice on any aspect of the new national security screening regime please do not hesitate to reach out to your usual Clifford Chance contact.

### 17 sensitive sectors

- 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 Technology
- Suppliers to the Emergency Services
- Synthetic Biology
- Transport

*Only certain activities within these sectors are specified as sensitive. For assistance in verifying whether your business may be engaged in specified activities, speak to your usual Clifford Chance contact.*

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