UK Seeks to Strengthen its National Security Regime

1. Introduction

On 24 July 2018, the U.K. Government's Department for Business, Energy and Industrial Strategy released a white paper titled "National Security and Investment" ("White Paper"), together with a draft Statutory Statement of Policy. In these documents, the U.K. government proposes a new framework that will transform how the U.K. assesses and manages national security risk arising from certain types of investments and acquisitions.

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2. Overview of the New Regime

(a) Trigger Events

Under the proposed regime, the U.K. government will have the authority to review and mitigate the national security risk associated with transactions involving certain "trigger events" that involve the acquisition of:

- more than 25 percent of an entity's shares or votes;
- significant influence or control over an entity;
- further acquisitions of significant influence or control over an entity beyond the above thresholds;
- more than 50 percent of the asset; or
- significant influence or control over the asset.

Trigger events are not limited to transactions in which foreign parties invest in a U.K. business or acquire a U.K. asset; a transaction involving only U.K. entities could meet the trigger event criteria. Moreover, investments or acquisitions occurring outside of the U.K. could also give rise to a trigger event, provided that the trigger event has a sufficient nexus to the U.K. The White Paper does not propose any carveouts or "safe harbours" that would expressly exclude certain types of transactions from review.

(b) Risk Assessment

The White Paper explains that the U.K. government will analyze three categories of risk in each trigger event:

- *Target Entity Risk:* Does the target entity/asset pose a risk to national security (for example, when it is involved in "core areas" of the economy such as nuclear, defence, communications sectors)?

- *Trigger Event Risk:* Does the nature of the transaction create an ability to undermine national security (for example, through potential disruption, espionage or inappropriate leverage)?
- *Acquiring Entity:* Would the acquiring entity seek to undermine national security?

Based on its assessment of these risk, the U.K. government can "call in" a trigger event for a comprehensive national security review.

Although parties to a trigger event will not be subject to a mandatory filing requirement, they will be encouraged to make voluntary notifications to the U.K. government if they believe a transaction might raise national security concerns. If the parties elect not to make a notification, the government could still "call in" the transaction for review.

(c) Timeframe For Assessment

After receiving a notification, a Senior Minister (i.e., a Cabinet-level minister) will have 15 working days (extendable by a further 15 working days) to carry out a preliminary review to decide whether to "call in" or "screen out" the trigger event. Alternatively, the Senior Minister can elect to call in a trigger event that the parties did not notify.

If the government "calls in" a trigger event, it will have 30 working days to assess any relevant national security concerns (extendable by a further 45 working days). These time periods would be "paused" when the government awaits responses to information requests sent to the parties. Furthermore, the U.K. government and the parties may agree to a "voluntary period" that extends the review period at the conclusion of the 45 working day period.

(d) Mitigation And Sanctions

Should the government conclude that a trigger event poses a national security risk, it will have the ability to impose "conditions" in order to prevent or mitigate such risk. In addition, the government will have the power to block a transaction prior to closing, or even force the parties to unwind a transaction after completion, to address national security concerns.

3. Key Takeaways

(a) Expected Increase In Filings And Mitigation Measures

The U.K. government anticipates that around 200 notifications will be made each year under the new regime, of which 100 are likely to raise national security concerns and 50 would require some form of mitigation. These numbers indicate that many more filings and interventions will be made under the new regime than under the existing framework, where the U.K. government has only intervened in a total of seven transactions during the last 16 years because of national security concerns.

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(b) Another Regulatory Regime For Dealmakers To Consider

The updated U.K. national security regime will be yet another regulatory regime for dealmakers to consider. Given the type of transactions that could constitute trigger events, parties to a wide range of investments and asset acquisitions will need to consider the notification, timing, and potentially mitigation associated with transactions that have a nexus to the U.K.

If enacted, the regime would have far-reaching implications for U.K. and non-U.K. based companies seeking to make investments and purchase assets that have a U.K. nexus.

4. Next Steps

The national security review regime described in the White Paper represents a new approach to dealing with investment risks in the U.K. If enacted, the regime would have far reaching implications for U.K. and non-U.K. based companies alike seeking to make investments and purchase assets that have a U.K. nexus.

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