



## THE NATIONAL SECURITY AND INVESTMENT ACT 2021 IN PRACTICE

[How the UK's National Security and Investment Act 2021 has worked since its coming into force on 4 January 2022](#)

In an earlier article<sup>[1]</sup>, we described the then-new UK national security and investment regime introduced by the National Security and Investment Act 2021; an act designed to provide the new Investment Security Unit (ISU)<sup>[2]</sup> the power to assess and intervene in investments and other acquisitions of control that may give rise to UK national security risks. The Act came into force on 4 January 2022<sup>[3]</sup> and the ISU has since published its first annual report<sup>[4]</sup> and further guidance<sup>[5]</sup> on the application of the NSI Act.

The report shows that both mandatory (approx. 90% of all notifications) and voluntary (10%) notifications have resulted in less than 8% call-ins by the ISU, and that just over 1% of all notified transactions have been blocked over that period. Unsurprisingly, the focus of the reviews has been the acquisitions of companies in the defence, military and dual use sectors, and of critical suppliers to government entities, but interestingly, the ISU's first blocking order<sup>[6]</sup> concerned the acquisition of control over an asset<sup>[7]</sup> (namely, the licensing of intellectual property for technology capable of dual use, rather than taking control of the licensor itself) which does not fall under the mandatory notification regime of the Act but which the licensor had voluntarily notified.

This is evidence that the ISU and the Secretary of State for the Department for Business, Energy & Industrial Strategy (BEIS) are willing to use all the powers of the Act in the defence of UK national security, including where this entails 'looking back' at proposed acquisitions that preceded the entry into force of the Act, as illustrated by the acquisition by Nexperia, a Dutch subsidiary of China-based Wingtech Technology Company Ltd, of Newport Wafer Fab, the UK's largest semiconductor factory, announced in July 2021. At the time of writing, the official national security assessment is still pending and a decision is expected in October 2022.

Other final orders published earlier this year[8] by Department for BEIS are evidence of the ISU's use of the Act to approve acquisitions subject to certain conditions[9] such as enhanced security measures or undertakings for the continued provision of services, designed to mitigate the risk to national security.

As to the ISU's latest guidance notes, they seek in particular to provide clarity on matters such as the temporary acquisition of control (e.g. where the appointment of a liquidator may be a qualifying acquisition and require mandatory notification by reason of its control over the assets) or the granting of security over shares of a qualifying entity (which would not call for mandatory notification unless it amounts to a legal transfer of title or until its enforcement) or internal corporate reorganisations (which may be technically notifiable even where they present no substantial national security risk), but also in what measure certain contractual rights may (if they permit the investor to secure or prevent the passage of certain resolutions) or not trigger mandatory notification (if they enable the investor to materially influence the policy of the company in question).

The ISU's next annual report in the spring of 2023 will no doubt provide further interesting insights on its operations and its application of the Act.

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1. Published on 19 August 2021 [https://www.linkedin.com/posts/azmi-%26-associates\\_new-uk-national-security-and-investment-regime-activity-6833961446615982080--POW](https://www.linkedin.com/posts/azmi-%26-associates_new-uk-national-security-and-investment-regime-activity-6833961446615982080--POW).
  2. Within the Department for Business, Energy and Industrial Strategy.
  3. Subject to regulations such as the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulation 2021.
  4. Covering the 3-month period from implementation in January to 31 March 2022; the ISU's next annual report is due on 31 March 2023.
  5. The 'National Security and Investment: market guidance notes July 2022' of 19 July 2022.
  6. Final order dated 20 July 2022: University of Manchester/ Beijing Infinite Vision Technology Company Ltd.
  7. Pursuant to Article 9 of the NSI Act 2021.
  8. The latest being an order of 15 September 2022 on the acquisition of Connect Topco Limited by Viasat, Inc.
  9. Pursuant to Article 26 of the NSI Act 2021.

**Written by:**



**Pierre Brochet**  
*Foreign Qualified Lawyer*  
pierre.brochet@azmilaw.com

**Corporate Communications**  
**Azmi & Associates**  
*30 September 2022*

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