

**FDI Guide
United Kingdom**

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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former

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	Topic	Explanation/Description of what is expected	United Kingdom
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>The United Kingdom’s new national security and investment regime (the ‘NSI Regime’) came into force on 4 January 2022. It enables the UK Government to review a wide range of investments made by any investor (including those from the UK) and imposes a mandatory notification requirement as regards certain investments in sensitive industries.</p> <p>The UK Government already had the ability to intervene on specified public interest grounds in transactions that are reviewable under UK merger control rules, including on national security grounds. This continues to be the case, save that national security concerns are now only addressed under the NSI Regime.</p>
2.	Legal regime Authority(ies) in charge	<p>Describe source(s).</p> <p>Name of authority in charge of applying the FDI rules (Minister/Agency/...).</p>	<p>The NSI Regime was established in the National Security and Investment Act 2021 (NSIA) and accompanying secondary legislation.</p> <p>The day-to-day operation of the NSI Regime is administered by the Investment Security Unit (ISU) which sits within the Department for Business, Energy and Industrial Strategy. The ultimate decision-maker is the Secretary of State for Business, Energy and Industrial Strategy.</p>
3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>The NSI Regime allows the UK Government to scrutinise a wide range of investments and acquisitions on national security grounds. It is not a foreign investment regime per se because it applies to any investor, irrespective of its origin.</p> <p>The NSIA created a new system of mandatory notifications and enables the UK Government to review a broader range of investments that can also be notified on a voluntary basis.</p>

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			<p>A mandatory notification may be triggered where all of the following conditions are met (no minimum turnover or asset thresholds apply):</p> <ul style="list-style-type: none"> • there is an acquisition of shares or voting rights that crosses one of three thresholds: (1) more than 25 per cent; (2) more than 50 per cent; or (3) 75 per cent (another provision imposes a mandatory filing obligation for the acquisition of voting rights that enables the investor to ‘secure or prevent the passage of any class of resolution governing the affairs of the entity’; UK Government guidance suggests this should only apply to rights/vetoes that relate to all or substantially all matters, so it is unlikely to be relevant to many transactions); • the target is a UK entity or a non-UK entity that carries out activities in the UK/makes supplies to persons in the UK; and • the target carries out activities in the UK that fall within one of the 17 sectors set out in detailed secondary legislation (see item 4 below). <p>Even where there is no mandatory filing requirement, the UK Government has the power to call in a broader set of investments, which can also be notified on a voluntary basis:</p> <ul style="list-style-type: none"> • In addition to the mandatory notification thresholds, the UK Government’s call-in powers extend to acquisitions of ‘material influence’ over a UK entity or a non-UK entity that carries out activities in the UK/makes supplies to persons in the UK. The concept of material influence was imported from UK competition law and focuses on the investor’s ability to materially influence policy relevant to the target’s market behaviour. This can be satisfied with shareholdings lower than 25 per cent, where the remaining shares are widely distributed and/or the investor’s shareholding is accompanied by other rights, such as the ability to appoint a board director. • Certain acquisitions of assets that are located in the UK or that are used in connection with UK activities or supplies to persons in the UK can also be subject to review, where the acquirer gains the right to use the asset, or to direct or control how the asset is used (in each case, at least to a greater extent than prior to the acquisition).

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			<ul style="list-style-type: none"> Again, there are no minimum turnover or asset thresholds. Neither is there any requirement for the target to carry out activities within any particular sector.
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>Indirect acquisitions are caught by the NSI Regime. The acquisition of a parent company will generally be considered to confer control over its majority-owned subsidiaries.</p> <p>As regards intra-group transfers, the relevant rules are somewhat unclear, but the ISU does take the view that certain intra-group transfers can be subject to the NSI Regime.</p> <p>The NSIA does not make specific provision for greenfield investments. Accordingly, whether or not the NSI Regime applies will depend on the general rules set out above.</p>
		<p>Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.</p>	<p>Yes. The Secretary of State can call in investments for review under the circumstances set out above.</p> <p>Any call-in notice must be issued by the earlier of: (1) five years after the relevant acquisition (or after the NSI Regime came into force for investments that took place between 12 November 2020 and 3 January 2022); and (2) six months from the day after the Secretary of State became aware of the investment.</p>
4.	Sectors falling under the FDI scope	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign</p>	<p>Secondary legislation (the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021) defines 17 sectors to which the mandatory filing regime may apply. The relevant rules are highly technical, but the sectors relate to the following areas:</p> <ul style="list-style-type: none"> advanced materials; advanced robotics; artificial intelligence; civil nuclear; communications;

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		investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	<ul style="list-style-type: none"> • computing hardware; • critical suppliers to the UK Government; • cryptographic authentication; • data infrastructure; • defence; • energy; • military and dual-use items; • quantum technologies; • satellite and space technologies; • suppliers to the emergency services; • synthetic biology; and • transport.
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	The NSI Regime applies equally to all investors, irrespective of their location or origin.
6.	Procedure 6.1 Before or post-closing filing		Investments that are subject to a mandatory notification requirement must be notified and approved prior to completion. Voluntary notifications can, in theory, be made pre- or post-closing.
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	As noted above, a pre-closing notification is required for investments that are subject to the mandatory notification obligation. Failure to do so automatically renders the transaction void under UK law and can lead to significant civil and criminal sanctions.

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8.	6.3 In the case of post-closing, what are the powers of the authority?		The Secretary of State has the ability to call in transactions for review after completion in the circumstances described above. In this case, there are broadly equivalent powers as under the mandatory notification procedure, including as regards the imposition of remedies in the event that a risk to national security is identified.
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	The ISU is generally willing to engage informally, though its guidance is not legally binding and is typically phrased as such. There is no set procedure, and these interactions typically take place through informal email correspondence. In order to obtain a legally binding decision, a voluntary notification would need to be submitted to the ISU.
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	The NSI Regime provides for a period of pre-notification review followed by the ISU's statutory review period. To date, the ISU has generally been able and willing to undertake this process within a week (provided the notification contains all of the prescribed information).
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist <i>de facto</i> or <i>de jure</i> .	The ISU is subject to an initial statutory review period of 30 working days, which runs from the acceptance of a notification. By the end of that period, the ISU must either approve the notified transaction or call it in for a full national security assessment. The statutory timeframe for a full national security assessment is an additional 30 working days. However, this can be unilaterally extended by 45 working days, further extensions can be agreed with the parties, and the statutory review period is suspended when the ISU requests any information. In practice, simple cases may well be approved before the expiry of the initial 30 working day review period. Conversely, complex cases may take 105 working days or longer.
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	Parties should cooperate fully and engage with the ISU in a clear and transparent manner, especially in complex cases. The provision of misleading information can lead to the revocation of amendment of an approval decision and the imposition of civil penalties (fixed and daily fines) and criminal sanctions (imprisonment of up to five years).

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		Are there any guidelines issued by the authority?	The ISU has published a range of guidelines on the National Security section of the UK Government website. ¹
13.	(iv) Filing fees	Is there a filing fee?	No.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>NSI notifications do not require extensive information about the investor, but the following must be submitted:</p> <ul style="list-style-type: none"> • basic information, such as the investor’s name, country of origin and activities; • information on any non-UK Government or representative that has any share ownership or voting rights in the acquirer; • information on any contractual arrangements with other parties regarding share ownership or voting rights in relation to the target; • details of all individuals or companies holding an interest of five per cent or greater in the acquirer; and • details of the directors, including whether they are politically exposed persons.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	As noted above, the ISU must complete its initial review within 30 working days of accepting the notification. Failure to do so means that the transaction cannot be subjected to a full national security assessment. However, there is unfortunately no deemed clearance provision if the ISU fails to complete its review of a mandatory filing within the statutory timeframe.

¹ See : www.gov.uk/government/collections/national-security-and-investment-act, accessed 24 October 2022.

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16.	<p>Conditionality of approval</p> <p>(i) Type of conditions or commitments</p>	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p>At the end of its assessment, the Secretary of State may impose remedies that are necessary and proportionate to prevent or remedy a risk to national security.</p> <p>The regime is too new to be able to clearly define what remedies the Secretary of State might impose, but we expect likely remedies to include the following:</p> <ul style="list-style-type: none"> • access conditions (eg, limiting access to a particular site or dual-use technology to named individuals); • information/operation conditions requiring that only persons with appropriate UK security clearance have access to confidential information or have management involvement; • conditions requiring the retention of UK staff in key roles at particularly sensitive sites; and • the prohibition of the investment (including for it to be unwound in the case of post-completion reviews).
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	The Secretary of State retains the ability to call in any qualifying investment that may give rise to a national security risk.
18.	(iii) Risk of veto	Describe a topical case. Statistics	<p>Although the NSI Regime only came into force on 4 January 2022, the ISU has already publicised the initiation of two detailed national security assessments, in relation to: (1) the acquisition of Newport Wafer Fab (a silicon and compound semiconductor foundry in Wales) by Nexperia (a Dutch semiconductor manufacturer that is a subsidiary of Chinese company Wingtech Technology); and (2) an acquisition by Altice (a French multinational telecoms and media company) of a shareholding in BT (a British telecoms provider) that brought Altice’s total stake to circa 18 per cent.</p> <p>Moreover, the ISU published details of the first prohibition under the NSI Regime on 20 July 2022. Specifically, the UK Government blocked the acquisition by Beijing Infinite Vision Technology Company of a licence to use intellectual property (IP) relating to video imaging technology that was owned and developed by Manchester University, emphasising the breadth to which the NSI Regime can be used to control</p>

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			the acquisition of UK technology by parties identified by the UK Government as potentially raising national security concerns.
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	<p>The NSIA does provide for various interactions between the ISU and other UK authorities.</p> <p>Most importantly, the ISU routinely engages with a wide range of UK authorities in relevant sectors, such as defence, security, energy and the emergency services, in order to understand whether any national security concerns could arise from any given investment. The NSIA facilitates those interactions by permitting other public authorities (including the Competition and Markets Authority) to disclose information to the Secretary of State.</p> <p>In addition, the Secretary of State has the power to instruct the Competition and Markets Authority to undertake any action she/he considers appropriate.</p>
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	
		<ul style="list-style-type: none"> breach of conditions and/or commitments attached to the approval; and 	<p>For legal entities, breaching an order can give rise to: (1) fines of up to five per cent of group worldwide turnover or £10m (whichever is higher); and b) further daily fines of up 0.1 per cent of worldwide turnover or £200,000 per day (whichever is higher).</p> <p>For individuals, breaching an order can give rise to: (1) fines of up to £10m; (2) daily fines of up to £200,000 per day; and (3) imprisonment for up to five years.</p>
		<ul style="list-style-type: none"> investment carried out without prior approval 	<p>An investment that is subject to a mandatory notification requirement but that is not approved prior to completion is legally void under UK law, though this can be remedied through a retrospective validation process.</p> <p>In addition, the acquirer is liable to: (1) fines of up to five per cent of the group worldwide turnover or £10m (whichever is higher); and (2) further daily fines of up 0.1 per cent of worldwide turnover or £200,000 per day (whichever is higher).</p>

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			Finally, where an offence is committed by an entity with the consent/connivance or due to the neglect of an officer of the company, that individual is liable to: (1) fines of up to £10m; (2) daily fines of up to £200,000 per day; and (3) imprisonment for up to five years.
21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	Not applicable.

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