



Foreign Investment Review: The New UK National Security & Investment Act

Thursday 7 October

2.00 - 3.00 pm BST / 3.00 - 4.00 pm CEST / 9.00 - 10.00 am EDT

Speakers



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NSIA in a Snapshot



National Security & Investment Act (NSIA) received Royal Assent on 29 April 2021



Will create UK's **first standalone** foreign investment and national security screening regime



Mandatory notification will apply to acquisitions involving businesses in one of 17 industry sectors; **voluntary** otherwise



No **safe harbours**



Very wide geographic nexus



UK Government will have ability to "call in" transactions that constitute a "trigger event"



Penalties for non-compliance **among the most severe** in Europe (incl. fines and criminal liability for directors)



Government will be able to call in deals that completed between **12 November 2020** and the commencement of the new regime



New regime will take full effect on **4 January 2022**

Mandatory Notification in 17 Industries

Activities in scope are defined in regulations AND need to be "carried on" in the UK to give rise to a mandatory notification requirement



Civil Nuclear



Communications



Data Infrastructure



Defence



Energy



Transport



Artificial Intelligence



Advanced Robotics



Computing Hardware



Cryptographic Authentication



Advanced Materials



Quantum Technologies



Synthetic Biology



Critical Suppliers to Government



Suppliers to the Emergency Services



Military or Dual-Use Technologies



Satellite and Space Technologies

Which Transactions Must be Notified



A transaction involving an entity carrying out one or more of the defined activities in the 17 mandatory sectors **must be notified** if one of the following "Trigger Events" takes place:

Acquisitions of shares/voting rights in the 17 industry sectors resulting in:

1

Holding more than **25%**

2

Holding more than **50%**

3

Holding **75%** or more

Asset acquisitions:



Do **NOT** require mandatory notification

Suspensory regime!

Closing not permitted until clearance
is obtained

CFIUS: Regulatory Highlights

Mandate

- Review of foreign investments and certain other transactions on national security grounds
- “National security” not defined; risk = vulnerability (US business) + threat (foreign investor)

Jurisdiction

- Controlling investments (“control” = ability to direct or decide important matters)
- Non-controlling investments in TID (technology, infrastructure, data) US businesses
- Certain real estate transactions (even where no “US business” is involved)

Mandatory pre-closing filings

- Investments (controlling or certain non-controlling) in “critical technologies” US businesses if regulatory export authorization would be required
- Acquisitions of “substantial interest” in TID US business by foreign government-affiliated investors

Voluntary filings

- Risk assessment

Outcome

- CFIUS’ clearance = safe harbor
- President, assisted by CFIUS, may block, condition, or unwind a transaction

Voluntary Notification (Non-Suspensory)



"Trigger Events" that are not subject to the mandatory notification requirements can be still be **called in** if there are national security concerns

Acquisitions of shares/voting rights outside the 17 industry sectors resulting in:

1

Holding more than **25%**

2

Holding more than **50%**

3

Holding **75%** or more

Acquisitions of material influence (in any sector):

Ability to materially influence the policy of the target (whether alone or together with other rights held prior to the transaction)

Asset acquisitions (in any sector):

Person is able to use the asset (to a greater extent than previously), or to direct or control how the asset is used (to a greater extent than previously)

Risk Mapping

Target Risk

- Does Target have activities in UK in one of the 17 formally defined industry sectors?
- Even if outside the formal definitions, are the Target's activities closely linked to / related to these sectors?

Acquirer Risk

- Who is the acquirer?
- Focus likely to be on acquirers from China, Russia, Middle East.
- PE buyers have also come under scrutiny in the past.

Trigger Event Risk

- Transaction structure and nature of "control" being acquired
- Non-controlling acquisitions also in scope



The background features a complex, abstract pattern of glowing, wavy lines in shades of blue, purple, and magenta. The lines are dense and layered, creating a sense of depth and movement. The overall effect is reminiscent of a digital or data visualization, with the lines appearing to flow and curve across the dark space.

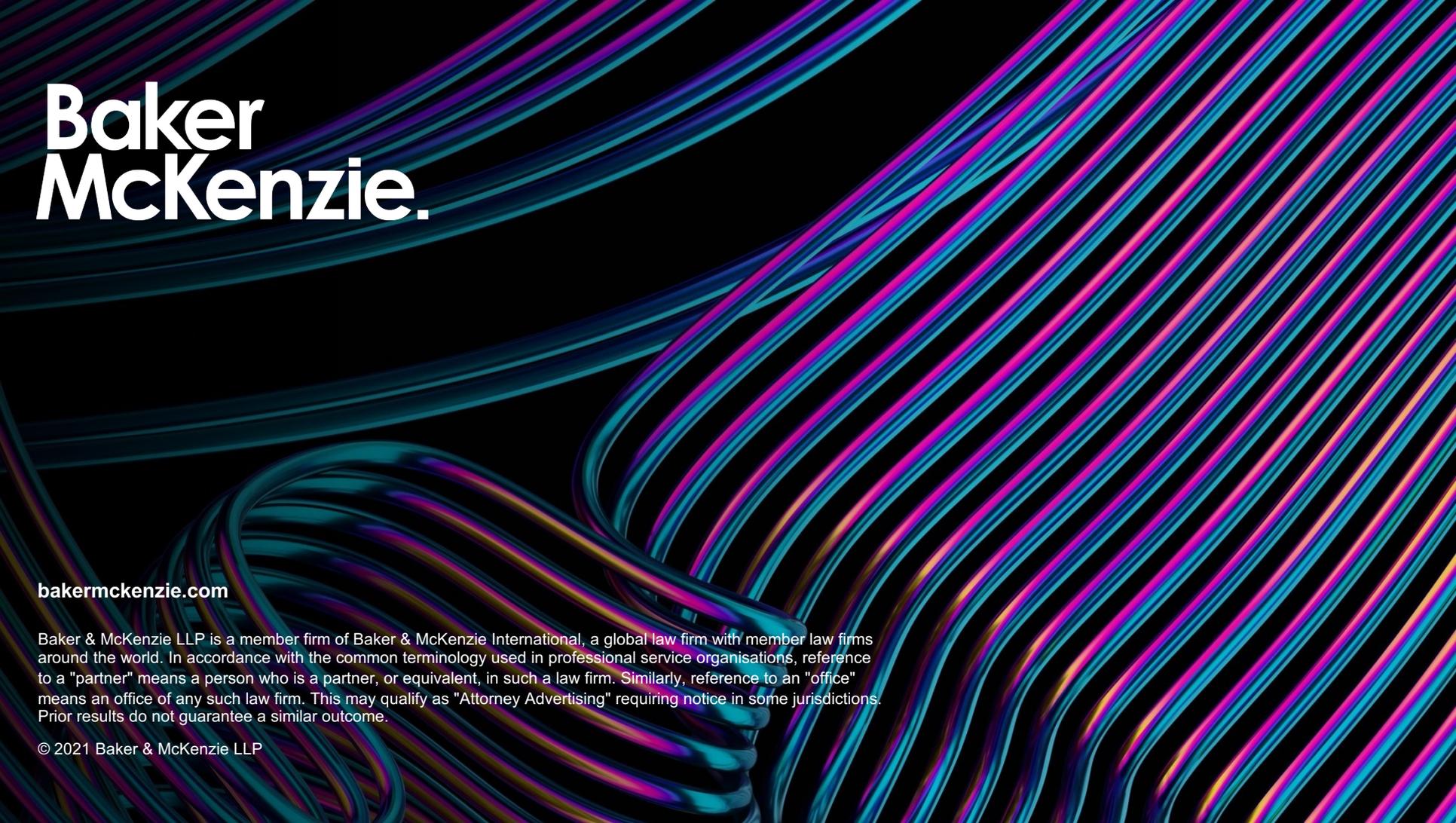
Questions



Next session

**Thursday 7 October,
4.00 - 5.30 pm BST
5.00 - 6.30 pm CEST
11.00 am - 12.30 pm EDT**

Foreign Investment Review:
Global Developments



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