

MEMO# 33029

January 7, 2021

ICI Global Letter on UK National Security and Investment Bill Consultation

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January 7, 2021 TO: ICI Members

ICI Global Members SUBJECTS: International/Global RE: ICI Global Letter on UK National Security and Investment Bill Consultation

On November 11, 2020, the UK Government introduced the National Security and Investment Bill (NSI Bill) to modernize and strengthen the United Kingdom's powers to investigate and intervene in investor activity that could impact the United Kingdom's national security.[\[1\]](#) The NSI Bill comprehensively reforms the UK's foreign investment rules, introducing a hybrid system of mandatory and voluntary notifications on the grounds of "national security" similar to that in the United States and Germany. The draft legislation, if adopted, will have wide ranging impact by introducing criminal and civil sanctions for failing to pre-notify sensitive deals, and allowing for transactions to be "called in" retrospectively for review up to five years post-closing. The NSI bill is expected to become effective in early 2021 and will have retrospective effect, applying to transactions entered into from November 12, 2020, onwards which have not completed by the commencement date of the NSI Bill.

In November 2020, the UK Government published a consultation on which sectors/sub-sectors should be captured by the NSI Bill's provisions.[\[2\]](#) The consultation sets out the UK Government's proposed definitions for the types of entity within each sector that could come under the NSI Bill's mandatory regime. Feedback will inform the ultimate definitions and policy decisions that the government will bring forward into secondary legislation.

The draft NSI Bill and proposed secondary legislation raise some concerns for regulated funds and their asset managers, and we have submitted the attached comment letter in response to the consultation. Our response focuses on the overarching question of whether the appropriate balance has been struck between safeguarding national security while encouraging positive inward investment, rather than addressing the specific consultation questions. In the letter, we express our overall support for a standalone national security regime that would strengthen the UK Government's ability to tackle investment activities that pose a risk to national security. We then raise specific and targeted changes that we believe would help achieve a better outcome. In particular, we request that the UK Government (1) consider whether and how to narrow the sectors so that there is more clarity regarding the entities that are within scope, or alternatively provide a list of entities

that are within scope, (2) include an exemption or safe harbour based on investor's profile, or alternatively introduce a pre-approval regime, and (3) include a de minimis threshold for entities that are pulled into scope due to sales into the United Kingdom.

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[Attachment](#)

endnotes

[1] Information about the NSI Bill is *available at*
<https://services.parliament.uk/bills/2019-21/nationalsecurityandinvestment.html>.

[2] The consultation *is available at*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935774/nsi-consultation.pdf.

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