



## CALL FOR EVIDENCE - NATIONAL SECURITY AND INVESTMENT ACT

Issued 15 January 2024

ICAEW welcomes the opportunity to comment on the Call for Evidence - National Security and Investment Act published by the Cabinet Office on 13 November 2023, a copy of which is available from this [link](#).

For questions on this response please contact ICAEW's Corporate Finance Faculty at [cff@icaew.com](mailto:cff@icaew.com) quoting REP 9/24.

This response of 15 January 2024 has been prepared by the ICAEW Corporate Finance Faculty. The Corporate Finance Faculty is ICAEW's centre of professional expertise in corporate finance. It contributes to policy development and responds to consultations by international organisations, governments, regulators and other professional bodies. It provides a wide range of services, information, guidance, events and media to its members, including its highly regarded magazine Corporate Financier and its popular series of best-practice guidelines. The faculty's international network includes member organisations and individuals from major professional services groups, specialist advisory firms, companies, banks and alternative lenders, private equity, venture capital, law firms, brokers, consultants, policymakers and academic experts. More than 40 per cent of the faculty's membership are from beyond ICAEW. David Petrie, Head of Corporate Finance at ICAEW is a member of the NSIA Expert Panel.

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## KEY POINTS

1. ICAEW acknowledges and is supportive of the improvements that have already been made to the National Security and Investment (NSI) system, as set out in section 6 of the call for evidence. We particularly welcome the stated intention to continue to publish market guidance updates that reflect stakeholder feedback and questions. [Response to survey Q43]
2. The NSI Act has undoubtedly impacted on corporate actions. Timelines for arranging financing - for growth, investment or emergency funding - and for completion of strategic acquisitions or disposals have been adapted (extended) to incorporate the regime's processes implemented. This increases the cost to businesses, including higher advisory and additional filing fees. The scope of the Act can also influence business strategy, for example, an asset sale may be preferred to the sale of shares if it is perceived to have a less uncertain outcome. [Response to survey Q43]

### Scope of the NSI Act

3. The market would benefit from clarity on whether the reach of the Act extends to transactions that are not effected in the UK, or when parties do not seek to enforce them in the UK. [Response to survey Q16]
4. The exemption of the appointment of liquidators, official receivers and special administrators from the mandatory notification regime would be very much welcomed. For the sake of clarity and consistency, it would also be helpful if this exemption were extended to all trustees in bankruptcy (not just official receivers) and receivers (whether fixed charge receivers, administrative receivers, court appointed receivers or enforcement receivers). The position would then be clear and consistent across all types of insolvency appointment and, as set out in the Call for Evidence, the Investment Security Unit (ISU) will still have an opportunity to review the situation on any subsequent sale of the shares (or change in voting rights) by the officeholder, being a separate trigger event. The same rationale would apply in relation to an exemption for all insolvency appointments which fall under the voluntary notification regime. [Response to survey Q16]

### Operation of the NSI Act and functioning of the system

5. We recognise the importance of stakeholder and user feedback for informing the ISU of potential refinements to the system. Our consultations with members and other professionals who interact with the NSI Act have revealed common causes of delays or uncertainty for businesses, and identified changes that would boost efficiency of the system. [Response to survey Q37]
6. These alterations are: [[Response to survey Q37]
  - Significant improvement is needed to the provision of hands-on guidance to market participants prior to formal submission of notifications. This may include creating a new email address to cater for administrative inquiries and questions of general procedure, or that do not relate to a notified case. See paragraphs 7-9.
  - The ISU's resources should include staff that are knowledge leads on sectors/ industries and there should be a timeline and plan for developing such a bank of knowledge. See paragraph 10.
  - Additional guidance is desirable on specific issues. See paragraphs 11-13.
  - Transparency on the ISU's way of working should be increased, with more information disclosed. See paragraphs 14-16.

- Efforts to increase the agility of the NSI system should be facilitated. See paragraphs 17-21.

### More and faster pre-notification guidance

7. The NSI system is still in its infancy and stakeholders are still on a learning curve. Accordingly, a business's need for assistance from the ISU can frequently arise before a notification is made. There may be queries that are unrelated to national security per se, or are questions of a drafting nature, or where there appear to be more than one possible interpretation of the guidance. At present, preliminary (pre-notification) discussions are happening but, in comparison with other long-established regulators, the ISU is slow to react. Providing preliminary assistance would be better catered for with a communication channel that is dedicated to responding to and dealing with questions regarding process, interpretations of existing guidance and drafting queries – this should be separate to the general email address. [Response to survey Q37]
8. There will be efficiency gains to the ISU from a separate communication channel with the reduction of rejected notifications and the unit will also be able to identify commonly encountered questions that may be addressed with the publication of new guidance. [Response to survey Q37]
9. In addition, while there is a timeline for the acknowledgement of notifications submitted through the portal, there is no such commitment regarding communications to the ISU's email address. Given that time is typically of the essence when financing needs to be secured or a competitive process is taking place, a commitment to respond to such communications within a very short time, eg 48-72 hours, would be extremely helpful to businesses. [Response to survey Q37]

### Knowledge 'leads' in ISU

10. The 'hub and spoke' approach adopted by the ISU would be greatly enhanced by having sector/industry knowledge leads within the ISU. This would enable indicative steers being available to businesses pre-notification and help to reduce the volume of notifications. Developing such a knowledge pool would be a medium-term but worthwhile investment. [Response to survey Q37]

### Additional guidance

11. There is little substantive guidance on how the NSI Act may apply to Outward Direct Investment (ODI) and published examples would also be of benefit. [Response to survey Q18]
12. More guidance would be helpful on the taking and enforcing of different security instruments, and more specific detail about the information that is required on proximity of real estate to a sensitive site. [Response to survey Q15]
13. On reorganisations and restructurings, it would be beneficial if there were a denylist of transactions that would be or are likely to be caught, and an allowlist on what is not intended to be caught. [Response to survey Q15]

### Transparency on ways of working and consistency

14. Wherever possible, information should be published on the unit's ways of working. For example, certainty would be increased for businesses if there was more visibility of how the ISU prioritises notifications. [Response to survey Q37]
15. More information also on how the review process is conducted will boost the quality of submissions. [Response to survey Q37]

16. Consistency could be improved when the ISU gives reasons for why a notification has been rejected as well as in the ISU's requirements of organisation structure charts. [Response to survey Q37]

### Agility in the NSI system

17. The ISU should be enabled to make timely modifications and to futureproof the system to take developments into account and to be proactive.
18. At present, if a notification is made using the wrong form, the NSI Act requires the government to reject the notification. For a business that has chosen the wrong type of notification inadvertently, eg for a reason that could have been rectified through pre-notification guidance (see paragraph 7), the requirement to resubmit the same information on a different form takes up disproportionate, avoidable time and incurs additional cost. It would be helpful to reduce this inefficiency. For example, one form could replace the different forms for mandatory and voluntary notifications, where the applicant would indicate which type of notification they are submitting. If the ISU rejects a notification because it is the wrong type, the applicant could be asked if it wishes the notification to be accepted on a different basis. [Response to survey Q40]
19. The Mansion House Compact and initiatives such as the British Business Bank's Growth Fund are set to increase businesses' access to private capital and likely increase the number of repeat acquirers. We accept that a general exemption for repeat acquirers is unlikely to be justified however there will be some efficiencies that are possible. The ISU should consider applicable criteria and specific information requirements of repeat acquirers that could lead to a more streamlined process. [Response to survey Q37]
20. It would also be efficient to allow a user to store information on the portal that they can refer to in subsequent cases, rather than having to repopulate each application. The onus would be on the user to keep information up to date. [Response to survey Q37]
21. If all insolvency appointments cannot be exempted from the notification requirements as we suggest in paragraph 4, having an expedited process for review of such notifications would be very helpful, particularly where it can be demonstrated that a delay in the appointment will be detrimental to the interests of creditors or other stakeholders (eg, where needed to ensure the preservation of assets). [Response to survey Q37]
22. The ISU should consider an expedited process for notifications relating to suppliers to government that are subject to an accelerated sale. [Response to survey Q37]