

CLIENT ALERT

Is CFIUS One of the Few Things Crossing the Atlantic?

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To date, the U.K. government has rarely used its power to intervene in M&A deals on the grounds of public interest, with only 12 transactions having been reviewed since 2013. This may be about to change. The National Security and Investment Bill (the **Bill**) if enacted would substantially reform the U.K.'s foreign investment rules, introducing a hybrid system of mandatory and voluntary notifications on grounds of national security similar to reviews by the Committee on Foreign Investment in the U.S. (CFIUS). The Bill, likely to become law in early 2021, is projected to lead to the notification of potentially 2,000 transactions per year. Critically, transactions completed on or after 12 November 2020 may be retroactively reviewed by the U.K. government once the Bill is passed into law.

Key points on the proposed regime:

- 17 sectors are subject to mandatory notification, including defence, energy, AI and other technologies.
- There are criminal and civil sanctions for breaches of mandatory notification obligations and other non-compliance, with fines of up to 5% of worldwide turnover or £10 million and up to 5 years imprisonment for directors.
- Transactions under the mandatory regime which complete without clearance will be void.
- Transactions can be retrospectively 'called in' for review up to five years after closing.
- There will be no turnover or market share thresholds below which transactions will fall outside the regime.
- Certain asset acquisitions (*e.g.* land, moveable property and intellectual property) will fall under the regime, as well as acquisitions of companies and other businesses.

The proposed regime is clearly an important development for M&A and FDI transactions involving the U.K. As a first step, overseas investors into the U.K. may wish to consider whether any of their recent transactions could be retroactively reviewed.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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