

UK National Security and Investment Act 2021 creates a screening regime for foreign investment

英国 2021 年《国家安全和投资法案》针对外国投资设立了审查制度

The National Security and Investment Act 2021 (the **Act**), which was enacted on 29 April 2021, creates an extensive new regime for screening foreign investment in the UK.

2021 年 4 月 29 日颁布的 《国家安全和投资法案》 (**法案**) 针对英国的外国投资新设了范围广泛的审查制度。

The Act introduces a **mandatory notification regime** for transactions in specific sectors and a voluntary notification regime for all other sectors. It allows the Secretary of State to “**call in**” investments for review (in any sector), and to assess and address any national security risks they involve, including imposing conditions on and potentially blocking transactions considered to pose an unacceptable risk to national security. When exercising the “call-in” power, the Secretary of State must consider the:

该法案针对特定行业的交易引入**强制申报制度**，对其他所有行业引入自愿申报制度。这部法案授权英国政府的相关国务大臣“**召见**”任何行业的投资进行审查，评估并应对投资所涉及的国家安全风险，包括向可能对国家安全造成不可接受风险的交易施加先决条件乃至阻止这类交易。国务大臣在行使“召见”权时必须考虑：

- **target risk** – the nature and activities of the target;
- **标的风险**——标的之性质和活动;
- **trigger event risk** – the type and level of control being acquired and how it could be used; and
- **触发事件风险**——所收购的控制权类型和程度及其使用方式; 和

- **acquirer risk** – the extent to which the acquirer raises national security concerns.
- **收购方风险**——收购方引发国家安全忧虑的程度。

Why has the government introduced this?

立法原因

Because it considered that existing legislation did not provide adequate protection against the acquisition of UK businesses, assets and technology by foreign purchasers who could pose a threat to the national security of the UK. The core areas of risk for national security are seen as national infrastructure sectors, advanced technology, military and dual-use technologies, and direct suppliers to government and the emergency services. The government explains in its March 2021 policy paper “Global Britain in a Competitive Age” that the Act promotes inward investment, while minimising the potential risk to the UK’s national security, and has been introduced to strengthen the UK’s defence and security.

英国政府认为，针对可能对国家安全造成风险的外国收购方购买英国企业、资产和技术的活动，现有立法无法提供充分保护。涉及国家安全风险的核心领域为国家基础设施



行业、先进技术、军用和军民两用技术、以及政府和紧急服务部门的直接供应商。英国政府在 2021 年 3 月发布的政策文件《竞争时代的全球英国》中解释称，该法案促进对内投资，同时尽可能减少对英国国家安全造成的潜在风险，并通过该审查制度来加强英国的国防和安全。

Who will this affect?

受影响行业及相关方

Purchasers and sellers of businesses, companies or other entities carrying on activities in the UK, or supplying goods or services to customers in the UK, in particular where the target is active in any of **17 key sectors**, whatever the turnover or share of supply of the target. The 17 key sectors are: advanced materials; advanced robotics; artificial intelligence; civil nuclear; communications; computing hardware; critical suppliers to government; critical suppliers to the emergency services; cryptographic authentication; data infrastructure; defence; energy; military or dual-use technologies; quantum technologies; satellite and space technologies; synthetic biology; and transport.

在英国开展经营或者向位于英国境内的客户提供商品或服

务的企业、公司或其他实体的买卖方，尤其当标的活跃于 **17 个重点行业** 时，无论其营业额或供应份额如何，都将受到影响。这 17 个重点行业为：先进材料；高端机器人；人工智能；民用核能；通讯；计算机硬件；政府部门关键供应商；紧急服务部门关键供应商；加密认证；数据基础设施；国防；能源；军用或军民两用技术；量子技术；卫星和空间科技；合成生物学；交通。

What transactions will have to be notified?

需申报的交易

Notification for review and approval by the Secretary of State will be mandatory for notifiable acquisitions in the 17 key sectors listed above. It will be unlawful to complete a notifiable acquisition unless and until it is approved. Regulations will define specific activities within those sectors where notification by the acquirer will be mandatory. The current definitions remain in draft form, although they have been revised (and narrowed) in response to third party comments (see: <https://www.gov.uk/government/consultations/national-security-and-investment-mandatory-notification-sectors>). The government is continuing to engage with relevant sectors to further refine the definitions.

上述 17 个重点行业依法应申报的收购活动需遵守强制申报要求, 并须经过英国政府相关国务大臣的批准。获批之前完成应申报收购将构成违法。未来将有法规具体定义这些强制申报行业内的具体活动。尽管已根据第三方意见进行修订(并予缩减), 但当前定义仍在草拟中

(请参见: <https://www.gov.uk/government/consultations/national-security-and-investment-mandatory-notification-sectors>)。政府将继续与相关行业合作, 进一步完善定义。

When might parties consider making a voluntary notification?

自愿申报的时间

Transactions (other than notifiable acquisitions) may be notified on a voluntary basis to obtain approval, rather than risk being “called in” for review. Purchasers, sellers and target entities are encouraged to make formal **voluntary notifications** to the new Investment Security Unit of trigger events involving them which they consider could give rise to a national security risk.

除依法应申报收购之外的其他交易可能实施自愿申报获批模式, 不存在被“召见”审查的风险。对于收购方、卖方、标的实体认为自身涉及可能导致国家安全风险触发事件的情况, 英国政府鼓励他们向新设立的投资安全单位正式**自愿申报**这类触发事件。

Asset acquisitions will not be subject to mandatory notification, but may be “called in”. This includes acquisitions of control over land, tangible movable property (such as machinery used to make defence components), or ideas, information or techniques

which have industrial, commercial or other economic value (such as designs, source code or software). Only assets which are within the UK, or used in connection with activities carried on in the UK, or the supply of goods or services to persons in the UK, will be relevant. Interventions for asset transactions are expected to be very rare, unless they are integral to an entity’s relevant activities in a key sector, or the land is in a sensitive location (for example, close to a military base). Gaining rights or interests over an asset which enable the acquirer to use the asset, or direct or control how it is used, will count as a “trigger event”. However, loans, conditional acquisitions, futures and options are expected to be reviewed only if and when an actual acquisition of control occurs.

资产收购不适用强制申报制度, 但可能会被“召见”。当可获得控制权的资产收购属于以下几类时, 可能会被纳入审查范畴: 土地、有形动产(例如, 用于制作国防部件的机器), 或具备工业、商业或其他经济价值的方案、信息或技术(例如, 设计、源代码或软件)。相关资产的范围: 位于英国境内, 或者其使用方式与在英国开展的活动相关, 或者向英国境内人员供应商品或服务。预计资产收购受到英国政府干预的几率很小, 除非资产构成实体在重点行业相关活动不可或缺的一部分, 或者土地位于敏感位置(例如, 土地靠近军事基地)。倘若收购某资产的权利或权益将使得收购方能够使用该资产或者指示或控制其使用方式, 则这种收购即为“触发事件”。但是, 我们预计贷款、有条件收购、期货和期权只有在控制权的实际收购活动发生时, 才会受到英国政府的审查。



What are the relevant thresholds?

相关阈值

The new regime will apply to:

新制度将适用于:

Direct or indirect acquisitions of: 有关下列各项的直接或间接收购:	Mandatory notification 强制申报	Voluntary notification 自愿申报
more than 25%, more than 50%, or 75% or more of the shares or voting rights in a qualifying entity (i.e. acquiring shares or rights taking the purchaser above the relevant percentage); 持有合格实体 25% 以上、50% 以上、75% 或更多 股权或表决权 (即, 收购方持有的股权或表决权超过相关比例);	✓	✓
voting rights that enable or prevent the passage of any class of resolution governing the affairs of a qualifying entity; 持有的 表决权 能够使收购方通过或阻止影响合格实体事务的 任何级别的股东决议 ;	✓	✓
material influence over the policy of a qualifying entity; or 能够对合格实体的规章制度施加具有 重大影响 ; 或		✓
a right or interest in a qualifying asset , or to direct or control how it is used. 影响合格 资产 的权利或权益, 或者指示或控制该等资产的使用方式。		✓

Who will make the decisions?

审查部门

The Secretary of State for Business, Energy and Industrial Strategy (**BEIS**).

英国商业、能源与工业战略部 (英文缩写为**BEIS**) 的国务大臣。

Will there be any penalties for failing to notify?

违规处罚

Yes, there will be civil and criminal penalties for completing a notifiable acquisition without approval, including **imprisonment** for up to five years, **fin**es of up to £10 million (or, if higher, 5% of worldwide turnover) and **disqualification as a director** for up to 15 years. **Notifiable acquisitions which are completed without approval will be legally void.**

如未经批准完成依法应申报收购活动, 将面临民事和刑事处罚, 包括最长五年**有期徒刑**、最高 1 千万英镑 (或全球营业额 5%, 以较高者为准) **罚款**以及**取消董事资格** (取消期限可能长达 15 年)。如未经批准完成依法应申报的收购活动, 该等收购在则不具备法律效力。

What time limits will apply?

时间限制

The Secretary of State may “call in” a trigger event up to **six months** after becoming aware of it, if that is within **five years** of the trigger event occurring – but if the transaction was subject to mandatory notification, **no time limit** will apply.

触发事件发生后**五年**内, 英国政府相关国务大臣可在获悉该触发事件后六个月内“召见”, 但适用于强制申报制度的交易**无时间限制**。

Which acquirers are at risk?

面临风险的收购方

This will be assessed on a case-by-case basis, but a key factor will be the acquiring entity's affiliations to "hostile parties", rather than the existence of a relationship with foreign states, or nationality. The government says that it recognises that state-owned entities and sovereign wealth funds may have "full operational independence in pursuing long-term investment strategies with the object of economic return, raising no national security risks".

这将根据具体情况进行评估, 但一个关键因素在于收购方与“敌对交易方”的联系, 而非收购方是否与外国存在关系或者是否存在国籍问题。英国政府表示, 其认可国有实体和主权财富基金“在追求以经济回报为目标的长期投资战略时, 可能具备完全运营独立性, 不会引发国家安全风险”。

The Act applies to both foreign and UK purchasers (although the Act clearly focuses on foreign investment).

该法案同时适用于外国和英国收购方 (尽管该法案明确针对外国投资)。

When will this start to apply?

法律生效日期

The Act is expected to come into force later this year, but the Secretary of State will have power to "call in" transactions occurring from 12 November 2020, but will not "call in" transactions before the new regime has come into force. **This means that relevant transactions completed on or after 12 November 2020, or transactions that are currently being negotiated (or are agreed but not yet completed), could be subject to the new regime, once it comes into force.** If parties consider that a transaction could give rise to a national security risk, by contacting BEIS now, they can ensure that the "call-in" period would end six months after the regime enters into force.

该法案预计将在今年晚些时候生效, 英国政府的国务大臣有权“召见”2020年11月12日及以后完成交割的交易, 但是不会在新规生效前“召见”相关交易。这意味着一旦新制度生效, 在2020年11月12日或该日之后完成的相关交易或者当前正在谈判 (或商定但尚未完成) 的交易可能须适用该制度。如果各方认为一项交易可能引发国家安全风险, 应立即联系英国商业、能源与工业战略部, 以确保“召见”期间在该制度生效的六个月后结束。

There is no obligation to notify transactions before the Act comes into force.

在该法案生效之前, 各方没有义务申报交易。

What will be the process for notifying transactions?

交易申报流程

Notifications will need to be made via a new digital portal (currently being developed) to the new Investment Security Unit, at BEIS. Whilst the full Unit is currently being set up in preparation for the launch of the new regime, the government encourages parties to contact the Unit (by email) about transactions that may fall within the scope of the new regime. In our experience, the Unit is open to constructive dialogue and, if possible, will provide an initial view on a transaction.

需要通过新的数字门户 (目前正在建设中) 向英国商业、能源与工业战略部新设的投资安全单位进行申报。目前正在成立一个独立部门, 为新制度的启动做好准备, 同时, 针对可能纳入新制度范围内的交易, 政府还鼓励各方通过电子邮件联系该部门。根据我们的经验, 该部门欢迎进行建设性对话, 若有可能, 该部门还会提供对交易的初步意见。



Once the regime is in force, individual government departments will be involved in the screening process, depending on the sector affected by the transaction.

在该制度生效后, 各个政府部门将参与审查流程, 具体取决于相关交易所涉及的行业。

How long will these reviews take?

审查期

Notified transactions must either be cleared or “called in” within **30 working days** after the notification has been accepted. If “called in”, the Secretary of State will have a **further 30 working days** – extendable in certain circumstances by a **further 45 working days** – to assess the transaction fully. A further voluntary extension can be agreed with the parties in certain circumstances. The Secretary of State will “stop the clock” on each of these periods while requested information or attendance is awaited.

已申报交易必须在申报受理后 **30 个工作日内** 被放行或者“召见”。如需召见, 英国政府的相关国务大臣将在 **30 个工作日内** 全面评估该交易 (特定情形下, 可另外延期 **45 个工作日**)。特定情形下, 各方可商定进一步自愿延期。在等待所需信息或出席期间, 英国政府将“暂停”每个阶段的计时。

What remedies could be imposed?

英国政府可采取的救济措施

The Secretary of State will have power to impose any such remedies as are considered necessary to protect national security. This could include blocking or imposing conditions on transactions. **Interim orders** can also be imposed to prevent or reverse pre-emptive action.

英国政府国务大臣有权采取其认为对保护国家安全必要的救济措施: 可能包括阻止交易或对交易施加先决条件; 也可能为防止或逆转率先行动而采取**临时命令**。

What should you do about this now?

企业当前应对措施

The government’s intention is for the new screening regime to come into force by the end of 2021, although there is as yet no formal commencement date for the Act.

尽管尚未设定正式生效日期, 但英国政府的目标是使最新审查制度在 2021 年底之前生效。

Businesses should consider, with their advisers, whether their transactions could be subject to review.

If you are in one or more of the **17 key sectors**, review the revised draft definitions of sectors (and relevant activities) to check whether they are appropriate. As mentioned above, businesses should also consider contacting BEIS about a particular transaction, where there is a risk of “call in”, or it is not clear whether the transaction falls within the scope of the regime.

企业应当联合顾问和中介考虑其交易是否可能受到英国政府的审查。如果您的企业涉足**17 个重点行业**中的一个或多个, 则应审查修订后的行业 (及相关活动) 定义草案, 以确定是否列入其中。如上所述, 如果特定交易中存在“召见”风险或者不清楚其是否应适用该制度, 则企业还应考虑联系英国商业、能源与工业战略部。

Next steps

后续事宜

Before the regime comes into force, the government must publish various regulations, including:

在该制度生效之前, 政府必须发布各种法规, 包括:

- a statement of policy intent setting out how the Secretary of State will use the “call-in” power – this statement will be finalised following public consultation;
- 有关政策意图的报告, 其中阐明相关国务大臣将如何行使“召见”权——经咨询公众后将最终确定该报告;
- notifiable acquisition regulations specifying the sectors subject to mandatory notification – these regulations will be finalised following further engagement with the affected sectors; and
- 有关依法应申报收购的法规, 其中具体规定须强制申报的行业——将在与受影响行业进一步接触后最终确定这些法规; 和
- regulations specifying the form and content of mandatory and voluntary notifications – the notification forms are currently available in draft form and will be finalised following engagement with interested parties.

有关强制和自愿申报之表格和内容的法规——申报表目前正在草拟中, 将在与利益攸关方接触后最终确定。

For further information or assistance, please contact one of our team.

如需更多信息或协助, 请联系我们团队。



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