

Foreign Investment Matters

UK Government and House of Commons agree terms for parliamentary scrutiny of the UK's new national security investment screening regime

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On 14 March 2023, the UK Government and the UK House of Commons agreed a Memorandum of Understanding (**MoU**), which formalises the process for giving the UK Parliament oversight of the UK Government's use of its new national security investment screening regime under the National Security and Investment Act 2021 (**NSI Act**).

Under the MoU, the Business, Energy and Industrial Strategy Select Committee (the **Committee**) of the House of Commons has been given the right to scrutinize the UK Government's use of its new powers under the NSI Act. This supervisory role will be undertaken by a new sub-committee for this purpose, the National Security and Investment Sub-Committee (the **Sub-Committee**).

This new supervisory function creates an important new layer of accountability and some additional transparency in relation to a regime which is, given its national security focus, opaque from the perspective of the business and investment community.

The focus of the Committee's supervisory role will be on the overall effectiveness of the operation of the new NSI regime and its effects on business and investments in the UK. In order not to cut across the competency of the UK Government to take NSI decisions, scrutiny of *individual* cases by the Sub-Committee is expected to be exceptional and retrospective, and would only be undertaken once the window for any legal challenge has closed.

The MoU is not legally binding and will need to be renewed at the start of every parliament term.

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The National Security and Investment Sub-Committee will be assisted by external expert advisors who will also assist it in understanding relevant geopolitical and national security trends to inform its work. The Sub-Committee's work will largely be undertaken in private.

The main focus of the Sub-Committee will be to assess:

- (i) the effectiveness of the NSI regime and its implication for investment and for business; and
- (ii) the Investment Security Unit's (**ISU**)¹ working processes such as the ISU's efficiency in processing of notifications and in conducting national security assessments but also the effectiveness of the co-operation between the ISU and UK Government departments.

The Chair of the Committee (Darren Jones MP), noted that *"it is not for the Committee [...] to make different decisions from Ministers. Ministers [...] are empowered to make the decisions they make. It is for [the] Committee merely to have oversight and scrutiny of how they have come to those decisions and to recommend improvements, should the Committee see fit to do so."*

The Committee will be provided with the information necessary to carry out its oversight function. However, national security sensitive and/or commercially sensitive information will not routinely be shared with the Committee. This means that information about specific notifications that have been made to the ISU, eg the name of the parties etc., will only be provided to the Committee, at the discretion of the Secretary of State, on an exceptional basis. Access to such information is likely to be restricted to a limited number of individuals within the Committee, eg the Chair of the Committee.

¹ The ISU is the unit responsible for operating the UK NSI regime. Since 7 February 2023, the ISU sits in the Cabinet Office.

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