

# TWO DEALS BY CHINESE COMPANIES BLOCKED UNDER THE UK'S NATIONAL SECURITY AND INVESTMENT ACT

Since the introduction of the [National Security and Investment Act 2021](#) (the **NSIA** or the **Act**) in January 2022, the UK government has now twice exercised its powers under the Act to block a transaction on national security grounds. Both instances relate to the acquisition of potentially dual-use intellectual property or technology by companies linked to the Mainland. In this briefing, we give an overview of the NSIA, highlight the recent cases which indicate a potentially more interventionist approach by the UK on national security grounds, and the key takeaways.

## Overview of the NSIA

The NSIA, effective since 4 January 2022, establishes a mandatory notification and approval regime for transactions in 17 sensitive areas<sup>1</sup> of the UK economy and gives the government powers to scrutinise other transactions (not limited to particular sectors) to protect national security.

We have previously written in more detail on the provisions of the NSIA [here](#) and [here](#). In brief, the mandatory notification regime requires investors gaining “control” of qualifying entities (in the 17 sensitive areas) to receive Government approval before completing their deals. The Government also has the power to “call in” transactions that are not otherwise notified but that it reasonably suspects may raise national security risks - this power is widely drafted and can apply to the acquisition of UK or even foreign entities with sufficient nexus to the UK, or their assets. It is not limited to particular sectors, but turns on the existence of a “trigger event” (broadly, a change of control within the meaning of the Act). Parties can submit voluntary notifications if their deal falls outside the scope of the mandatory regime but involves a risk of being “called in” by the Government.

## First deal blocked under NSIA

The UK government first exercised its blocking powers under the NSIA on 20 July 2022 to prevent a Mainland entity (Beijing Infinite Vision Technology Company Ltd) from licensing intellectual property related to vision-sensing technology from the University of Manchester. According to a University of Manchester [webpage](#), the image sensing technology could be used in areas such as “robotics, VR, automotive, toys, surveillance etc.”

The Government’s [final order](#) states the technology has dual-use (i.e. military as well as civilian) applications and there is potential it could be used to build defence or technological capabilities which may present national security risk to the UK.

## Second deal blocked under NSIA

The second case relates to the proposed acquisition of the entire share capital of Pulsic Ltd by a Hong Kong-incorporated entity - Super Orange HK Holding Ltd. According to the Government’s [final order](#) published last week on 17 August 2022, the intellectual property for the software behind Pulsic’s electronic design automation (**EDA**) products (used to build cutting-edge integrated circuits) could be used in a civilian or military supply chain, and there is the potential the EDA tools could be exploited to introduce features into the design (including automatically and/or without knowledge of the user) that could be used to build defence or technological capabilities.

## Call-in on a completed acquisition

On 25 May 2022, the UK government also [called-in](#) for review the completed acquisition of Newport Wafer Fab, a British semiconductor manufacturer, by a Dutch subsidiary of Chinese company Wingtech. The transaction completed prior to the

<sup>1</sup> The 17 specified areas are: Advanced Materials, Advanced Robotics, Artificial Intelligence, Civil Nuclear, Communications, Computing Hardware, Critical Suppliers to Government, Cryptographic Authentication, Data Infrastructure, Defence, Energy, Military and Dual-Use, Quantum Technologies, Satellite and Space Technologies, Suppliers to the Emergency Services, Synthetic Biology, and Transport.

NSIA coming into force, but unusually the NSIA rules have retrospective effect such that the call-in powers can be applied to any transaction completed on or after 12 November 2020. The review remains ongoing.

## Takeaways

Detailed information available to the public on the above cases is limited. Nonetheless, we can observe the following:

1. Under the NSIA, investors can acquire control over qualifying entities indirectly, such as through an unbroken chain of majority stakes. **Press reports** indicate the HK-incorporated buyer of Pulsic is ultimately owned by a company incorporated in Shanghai. Similarly, the buyer of Newport Wafer Fab is a Dutch subsidiary of a Mainland company.
2. So far, the UK government has only exercised its blocking power against companies with links to the Mainland. As the Government has not released details on all transactions for which it has exercised its call-in review powers, it is not possible to tell the proportion of such reviews which involve the Mainland. However, it has confirmed at least one such instance (the acquisition of Newport Wafer Fab) as noted above.
3. Both cases were blocked due to software or technology with dual-use application. In the first three months of the Act being in effect, the UK government issued 17 call-in notices<sup>2</sup>, with “military and dual-use” being the leading area associated with the call-in notices. Under UK **guidance**, “military and dual-use” relates to goods and technology which are already ‘controlled’ due to their military or dual-use characteristics under the UK’s export control regime. However, the potentially broad scope of dual-use (which can range from raw materials to components to complete systems, for example aluminium alloys, bearings, or lasers) is expected to present challenges.
4. The case involving the University of Manchester’s proposed licensing of intellectual property underlines it is not simply acquiring control through share acquisitions that could fall foul of the NSIA. An acquisition or licensing of assets (which does not currently fall within the mandatory notification regime) could still be blocked. In this particular case, the parties submitted a voluntary notification.
5. Parties with Chinese links which are looking to acquire potentially sensitive technology from UK entities or those with UK operations should obtain specific advice on the NSIA to assess the need for a mandatory notification or making the deal conditional upon obtaining clearance on the back of a voluntary notification.

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<sup>2</sup> Source: **National Security and Investment Act 2021: Annual Report 2022** issued by the UK government. More details on the report can be found in our client briefing: **The operation of the NSIA so far: the regime’s first Annual Report**.