

National Security and Investment Bill

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Just a brief comment on the relevance of this Bill, which is progressing through Parliament, to real estate transactions. The Bill is designed to increase the Government's ability to scrutinise investments on national security grounds. It is "live" and will capture deals from 12th November 2020 onwards.

The Bill will create a mandatory notification regime for investments in 17 key sectors, including energy/infrastructure, but not land as a sector in its own right.

However, real estate deals can fall within the parallel voluntary notification regime, where they involve an asset of national security interest, for example where the property is, or is near to, a sensitive site. This could include some types of infrastructure and some government buildings.

A transacting party can voluntarily notify the government of the transaction, in order to get clearance. If it doesn't do so, there is a risk the transaction could be unwound up to five years after completion.

One issue is that there is no register of "sensitive sites" or any other way to conclusively check whether a site is "sensitive". Nor is there currently any guidance about how close a property would have to be to a sensitive site to be caught by the voluntary regime.

All of this means it will not necessarily be clear, when buying or lending on or taking a lease of a building next to, for example, a data centre or railway line or airport, whether the transaction could be affected by the Bill.

It doesn't feel like there is much risk here for real estate transactions generally but there is currently a sense of uncertainty as to how and when the Bill might impact.

So, a point to bear in mind on transactions and hopefully there will be more clarity for investors, tenants, and lenders as we go forward.