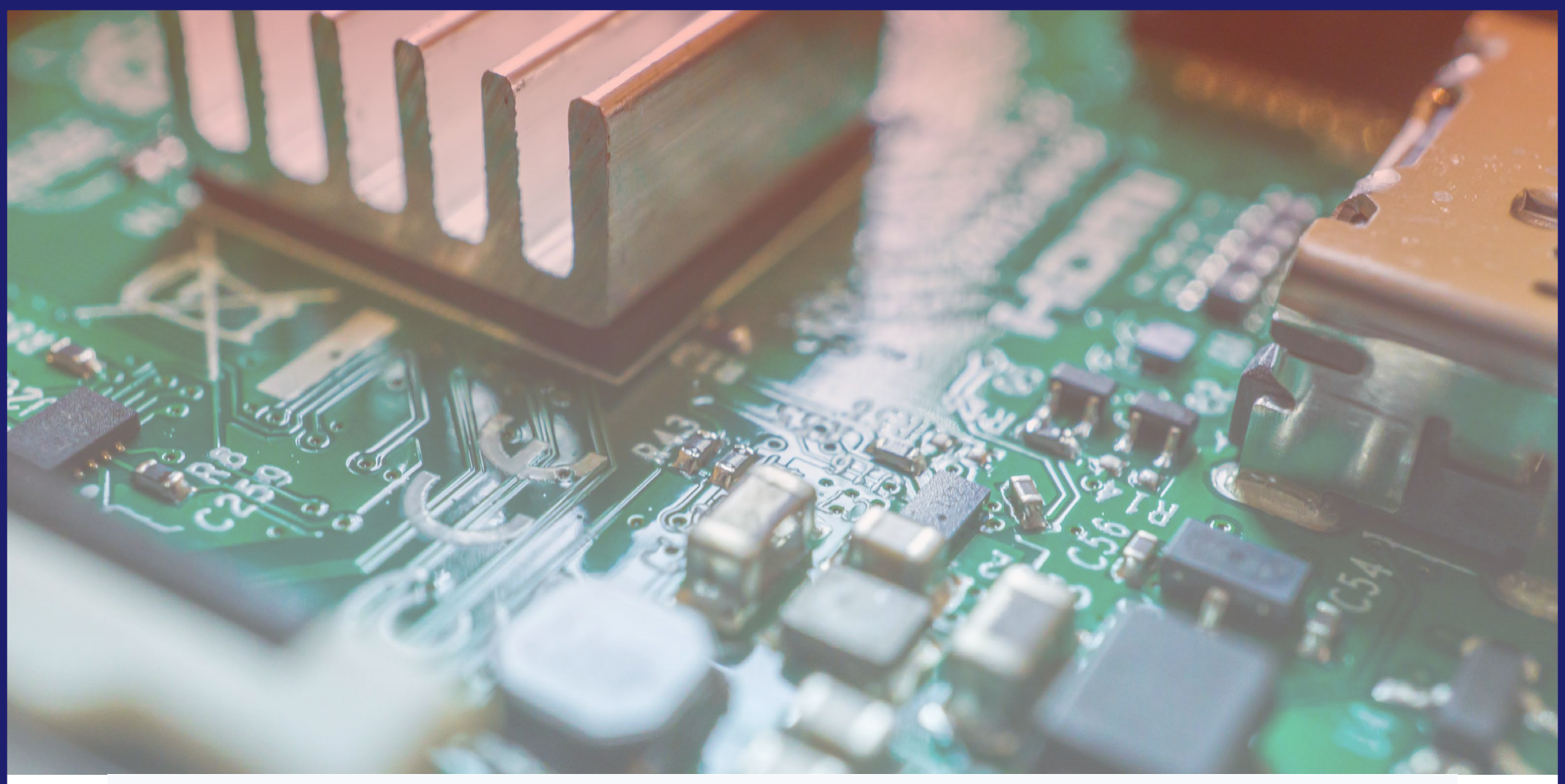

National security and foreign investment in the UK economy

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The new year saw the National Security and Investment (NSI) Act come into full force. As of 4 January, the UK government has the power to fully scrutinise and intervene in acquisitions that could harm national security in what the government have called 'the biggest shake-up of the UK's national security regime for 20 years'. The new powers replace provisions originally set out in the Enterprise Act 2002. The government argues the legislation will give investors additional certainty and clarity, but concerns have been raised about the damage this could cause to inward investment.

The Act itself, which had cross-party support as it passed parliament last year, gives the government, via the Investment Security Unit (ISU) in the Department for Business, Energy and Industrial Strategy, the power to amend or block acquisitions in 17 'sensitive areas of the economy' including defence, energy, transport and communications. The ISU requires notification if the investment amounts to more than 15 per cent of the company's value. Reporting on transactions in other areas of the economy are voluntary.

While the safeguards are not new, and indeed other governments have similar protections (CFIUS in the United States for example), this new UK legislation is much wider in scope, and some argue that the 15% investment threshold is too low; the Act also covers overseas companies that sell products or services in the UK. It is also worth noting concern that the government can also review deals for up to five years after transaction – a fact which makes it likely we will see hundreds of notifications to the Unit each year.

While the ISU is yet to be set up, there is also concern over the additional potential regulatory threat to M&A, particularly the idea of additional oversight and potential inhibited transitions in areas seen to be political contentious by government. Some are arguing that other political or industrial factors could be conflated with security concerns; it is clear the updated legislation certainly will requires careful advance insight alongside investor PDD.

Timescales set out in the Act are also of note and it will be worth paying close attention to the sheer number of notifications and how they are taken forward by the ISU - for example notifications are divided into two parts, review and assessment, where the latter only applies if an acquisition is 'called in'. Consequently, the impact on deal timelines could be significant. Non-compliance comes with criminal and civil sanctions – failure to submit a mandatory notification could result in financial penalties of up to five percent of total worldwide turnover or £10 million (whichever number is higher) and criminal liability for directors.

Political risk should be assessed as part of any deal as well as qualifying and mitigating the risks contained in the NSI Act.

To speak to one of our team about the implications of the Act and all other aspects of political and regulatory due diligence, email *scott@gkstrategy.com*