

16th October 2018

National Security and Investment White Paper
Consumer and Competition Policy Directorate
Department for Business Energy & Industrial Strategy
1st Floor
1 Victoria Street
London SW1H 0ET
nsiireview@beis.gov.uk
Sent by email and post

Dear Sir or Madam,

National Security and Investment Consultation

This letter is written in response to the *National Security and Investment* consultation on proposed legislative reforms and the associated draft Statement of Statutory Policy Intent on behalf of the Financial Law Committee of the City of London Law Society ("CLLS").

The CLLS represents approximately 15,000 City solicitors through individual and corporate membership including some of the largest international law firms in the world. The Financial Law Committee comprises leading solicitors in a number of law firms based in the City of London who specialise in international and domestic financial transactions, acting for UK and international businesses, financial institutions and regulatory and governmental bodies in relation to financial law.

The Financial Law Committee has reviewed the thoughtful submission prepared by the CLLS Competition Law Committee and, as a member of that Committee (as well as Chairman of the Financial Law Committee) it has been possible for me and concerned members of the Financial Law Committee to input, particularly to the section dealing with loan transactions.

The City of London is one of the world's leading centres for debt finance. The proposed regime would potentially have a devastating effect on those markets by creating very considerable legal uncertainty, not just for individual transactions but for the operation of markets, which seems out of all proportion to the risks syndicated lending on standard terms or the issue or trading of quoted debt securities and related arrangements could possibly raise, and disproportionate as regards even bilateral lending by regulated financial institutions (both banks and non-bank and alternative lenders that are managed by a regulated asset manager). We strongly urge that these transactions are excluded from the proposed law, or, at least, that a series of safe harbours are created which would exclude most such transactions and dealings from the impact of the law. This is important to ensure access to finance for British and international businesses accessing those systems and to avoid interference with settlement of transactions carried out in capital market and other clearing systems (eg by a call-in blocking completion of transactions in the course of clearing and settlement).

The CLLS Financial Law Committee strongly endorses the observations of the CLLS Competition Law Committee regarding the loan markets and its suggestions for ameliorating the position, while still achieving the aims of the proposed national security regime.

We also share the concerns of the CLLS Competition Law Committee about the proposals to apply the regime to purely domestic transactions and to transactions related only to assets outside the UK. We agree that there are more proportionate approaches that could be taken to the risks in relation to these transactions.

Lending to UK and international businesses will also be affected by the increased uncertainty and potential additional delays in relation to M&A transactions and the prospect of intellectual property interests and land transactions also being delayed or prohibited by the regime. While accepting the reasoning underlying this policy decision, we support the suggestions of the CLLS Competition Law Committee to reduce the burdens on business of these new uncertainties. This will be particularly important to the ability of these individuals to raise finance to develop their businesses. The CLLS Competition Law Committee's expertise in dealing with merger control proceedings and in third country national security regimes makes their advice particularly valuable.

We also agree that the concept of rescission of completed transactions has no place in the regime for the control of these transactions. Rescission is no more than a discretionary remedy in English law, for the simple reason that changed circumstances so often make it impracticable. So far as loans are concerned, rescission would involve early repayment of the loan and would in many cases bankrupt the borrower, or at least halt the project for which the loan was made. This would be likely to impact adversely on the matter that is sought to be protected by the regime and to drive similar businesses and their talent from the UK. We urge that this proposed remedy is abandoned.

We are aware that the Company Law Committees of the CLLS and the Law Society are also making a response which raises many of the same concerns. We urge you to have regard to that response also.

We should be happy to discuss these issues further and are also copying this letter and the CLLS Competition Law Committee response to the Treasury and the Bank of England.

Yours faithfully



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