

## National Security and Investment Act 2021 ("NSI")

### Response from Department for Business, Energy and Industrial Strategy ("BEIS") on the application of the NSI to the creation of an equitable charge over 25% or more of the shares in a company.

A CLLS working party led by the Chairs of the Financial, Insolvency, Regulatory and Corporate Law Committees has been having discussions with BEIS on the application of NSI to charges. The CLLS sought clarification whether a grant of security over shares where such a grant may create an equitable interest in those shares may constitute a trigger event under section 8(2) of the NSI, which could have the effect of bringing such a grant within the scope of the mandatory notification requirements.

**Response on creation of equitable charges** We have received the following response with regard to the creation of equitable charges over shares, which we are publishing with the consent of Lord Callanan, Minister for Business, Energy and Corporate Responsibility. We believe this will be helpful to lawyers and parties involved in the creation of these charges.

"The Government is of the view that section 8(2) should be read with section 8(1) and (3) of the NSI Act. Section 8(1) provides that a person gains control of a qualifying entity if the person acquires a right or interest in, or in relation to, the entity and as a result one of the cases set out in the section arises. The case set out in section 8(2) relates to an increase in the shareholding of the person and section 8(3) expands on the reference to "holding a percentage share" in subsection (2). The holding of shares in this context is a reference to having shares in a company. Whilst the grant of a security over shares could create an equitable interest in such shares, such an interest would not appear to grant any control over such shares, as referred to in section 8(1), until the happening of an event that would provide control. Therefore we do not think this falls within the scope of mandatory notification until such an event that would grant control.

Notwithstanding the above, the Government is considering whether any further clarification is appropriate and, if so, what format that should take."

**Next Steps** The CLLS working party has been advised that this issue is under consideration to be included in the next bulletin of guidance on the NSI to be issued by BEIS within six months of the Act coming into force. Meanwhile the working party is continuing discussions with BEIS particularly with regard to the impact of the NSI on market standard enforcement measures in new and existing security arrangements. We hope to publish further information on this as soon as practicable. Meanwhile it should be borne in mind that the creation of a legal charge and/or the acquisition of voting rights by lenders could require pre-clearance under the NSI. Specialist advice should be taken where these steps are in contemplation.