

# CANADA ORDERS TEMPORARY EXTENSION OF NATIONAL SECURITY REVIEW PERIODS UNDER THE *INVESTMENT CANADA ACT*

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In response to the COVID-19 pandemic, Canada has significantly increased the scrutiny of foreign investments using its national security review powers. An April 2020 Policy Statement indicated that investments in the health care sector and investments involving critical supply chains would be examined carefully (as detailed in our earlier [bulletin](#)). To ensure the availability of adequate time and resources for the review of potential national security issues, Canada has now also temporarily extended three significant time limits under the *Investment Canada Act's* national security provisions.<sup>[1]</sup>

Parties involved in notifiable investment transactions that are time-sensitive and parties involved in non-notifiable investment transactions should pay particular attention to these extensions, which apply to transactions that are notified, and non-notifiable transactions that are closed, between July 31 and December 31, 2020:<sup>[2]</sup>

- **Notifiable Investments** – The limitation period during which a national security review can be commenced is now 60 days (extended by 15 days) after filing of the Notification. This change will be most consequential for parties that want to confirm prior to closing that a national security review will not be initiated.
- **Non-Notifiable Investments** – The national security review powers may be invoked for investments that do not require a Notification (e.g., the acquisition of a minority shareholding that does not give rise to control over a Canadian business). The limitation period for commencement of a national security review is now 180 days after the date of closing (extended by 135 days). This extension provides the Government with substantially more time to detect and to consider whether to review such transactions, with a corresponding increase in uncertainty for such investors.
- **Initial Review Period Extension** – The foregoing limitation periods are both extendable for a specific investment by the Minister issuing a notice indicating that a national security review may be undertaken. The maximum duration of such a notice is now 90 days (lengthened by 45 days). This change provides

the Government with more time to decide whether a full national security review may be warranted, including consideration of any submissions by the parties.

The new time limits and the broader scope of reviews signaled by the April 2020 Policy Statement should be factored into transaction planning by buyers and sellers of Canadian businesses. More proactive government relations and communications strategies may also be increasingly important for transactions with potential national security issues.

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[1] The extensions are mandated by a Ministerial Order, effective July 31, 2020, made pursuant to the recently enacted Time Limits and Other Periods Act (COVID-19). The purpose of the extensions is set out in an [Explanatory Note](#).

[2] The extended time limits are set to expire and revert back to the previous time limits as of December 31, 2020. Given that the situation with the COVID-19 pandemic continues to evolve, however, it is possible that this expiry date may itself be pushed back.

#### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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