

CANADIAN GOVERNMENT EXPANDS NATIONAL SECURITY GUIDANCE

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On March 24, 2021, Canada's Minister of Innovation, Science and Industry [announced](#) that the government had updated its [Guidelines on the National Security Review of Investments](#) (the "**Guidelines**") for the first time since late 2016. The *Guidelines*, issued under section 38 of the *Investment Canada Act* ("**ICA**"), set out the government's approach to national security reviews of foreign-controlled inbound investments.^[1] The changes, which emphasize additional areas of potential national security concern, likely reflect the government's recent experiences in reviewing investments in these areas.

Notable Changes

The revised *Guidelines* include several notable changes.

First, the *Guidelines* confirm that the government is placing greater emphasis on the **identity** and **control** of the foreign investor. The government will consider who ultimately controls the investor, and the potential for third-party influence, especially from foreign governments. To that end, all investments by state-owned or state-influenced^[2] investors will continue to be subject to enhanced scrutiny regardless of the investment value.

Second, the *Guidelines* now include a more **detailed list of industries or business activities** that raise enhanced national security risk, adding critical minerals and sensitive technologies as areas of potential concern. Specifically, investments that impact Canada's critical minerals^[3] and their supply chains will be analyzed for potential national security risks. These critical minerals are important for the production of semiconductors, batteries and other technologies. Moreover, the *Guidelines* contain a non-exhaustive list of sensitive technology areas that could raise national security risks, including artificial intelligence, aerospace, medical technology, robotics and a number of other high-tech fields.

Third, the *Guidelines* explicitly acknowledge that investments that provide foreign investors with **access to sensitive personal data** are an area of concern and will be subject to enhanced scrutiny. Such sensitive personal data includes biometric, financial and communications data.^[4] The government's stated concern is that there is a risk that access to such personal data could be leveraged to harm national security through its

exploitation.

Practical Implications

The revised *Guidelines* reflect the government's continued focus on national security matters following the June 2020 study of the ICA by the House of Commons Standing Committee on Industry, Science and Technology.^[5] Foreign investors, especially those from countries that do not have free trade agreements with Canada, should be mindful of these *Guidelines* for business planning purposes. In addition to reviewing acquisitions, the government can also review greenfield investments on national security grounds.

It is also important to note that the April 2020 [Policy Statement on Foreign Investment Review and COVID-19](#) will continue to apply until the economy recovers from the effects of the pandemic. Please refer to our [2020 bulletin](#) for a summary on the heightened scrutiny of foreign investments under the *Guidelines* during the pandemic.

For more information about these *Guidelines*, or the rules relating to inbound investments into Canada, please do not hesitate to reach out to us or your usual McMillan contact.

[1] Please refer to our 2017 bulletin for a summary of the first edition of the *National Security Guidelines*: "[Government of Canada Provides Valuable Guidance on National Security Review of Foreign Investment in Canada](#)" (January 2017).

[2] This refers to an entity that is being influenced or is susceptible to being influenced, directly or indirectly, by a foreign state's government or agency.

[3] A list of Canada's critical minerals can be found [here](#).

[4] *Guidelines*, Section 8(xi)(c).

[5] See [June 2020 study of the ICA by the House of Commons Standing Committee on Industry, Science and Technology](#).

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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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