

INVESTMENT CANADA ACT THRESHOLD INCREASE - \$1 BILLION (CDN)

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As indicated in our March 2017 [bulletin](#), the Government of Canada previously announced its intention to accelerate by two years the previously scheduled increase to the “enterprise value” threshold under the *Investment Canada Act*. The Government confirmed that intention in the 2017 federal [Budget](#). The test was scheduled to remain at C\$600 million until April 24, 2017, when it would increase to C\$800 million for a further two-year period (until April 2019), and then C\$1 billion until December 2020. The announcement suggested that the threshold would increase to C\$1 billion on April 24, 2017 instead of the previously scheduled C\$800 million, but the Government had not introduced legislation to that effect.

The Government has now introduced into the House of Commons [Bill C-44](#), which would raise the enterprise value threshold to C\$1 billion for investments implemented after the day on which the relevant provisions of Bill C-44 come into force. In effect, Bill C-44 applies retroactively in that any application for review that is before the Minister at the time that the relevant provisions of Bill C-44 come into force, but that would not have been caught by the new C\$1 billion threshold, is deemed never to have been filed. Until Bill C-44 comes into force, the threshold will increase from C\$600 million to C\$800 million on April 24, 2017. It will increase to C\$1 billion, as noted, upon Bill C-44 coming into force. Beginning January 1, 2019, the C\$1 billion threshold will be adjusted annually by a GDP-based index. The table below summarizes the applicable thresholds and the time periods for which they apply:

Time Period	Applicable Threshold
Present – April 23, 2017	\$600 million
April 24, 2017 – date Bill C-44 comes into force	\$800 million
Date Bill C-44 comes into force – December 31, 2018	\$1 billion
January 1, 2019 onward	\$1 billion + GDP-based index

The threshold generally applies to direct acquisitions by WTO Investors (firms controlled in WTO countries) that are not State-Owned Enterprises, and requires filing of an application for review, to determine whether the

investment is “likely to be of net benefit to Canada”. The enterprise value threshold also applies for non-WTO Investors that directly acquire control of a Canadian business that was immediately prior to the investment controlled by a WTO Investor.

by Ryan Gallagher, Dan Edmondstone, François Tougas and James Musgrove

[1] This assumes that Bill C-44 becomes law sometime after April 24, 2017, and before the end of 2017.[ps2id id='1' target='']

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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