

# LATER GATOR – CANADA SEEKS CRITICAL MINERALS DIVESTITURE FROM PREVIOUS DIVESTITURE ACQUIRER

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On February 11, 2025, the Attorney General of Canada filed a Notice of Application ("**NOA**") in Federal Court to obtain an order directing Gator Capital Ltd. to divest its shares in Lithium Chile Inc.<sup>[1]</sup> This application is further to a November 2022 divestiture order made under the national security review (NSR) regime of the *Investment Canada Act* ("**ICA**") that required Chengze Lithium International Limited to divest its previous investment in Lithium Chile, which it sold to Gator in 2023. Lithium Chile is an Alberta-based mineral exploration and development company. As it turns out, Gator may not have been the ideal divestiture purchaser for Lithium Chile's shares.

The NOA represents the first case where the Government of Canada has turned to the courts to enforce the NSR regime under the ICA.<sup>[2]</sup> This enforcement action signals that the Government is serious about cracking down on ICA reviews to protect Canadian interests, particularly in relation to critical minerals.

## **Gator Emerges as a Divestiture Purchaser of the Shares of Lithium Chile**

As we [described at the time](#), in November 2022, the Minister of Innovation, Science and Industry ordered three divestitures of minority interests in Canadian critical minerals companies held by Chinese investors. One of the companies was Chengze, which was ordered to divest its minority investment in Lithium Chile within 90 days to a party that was neither an affiliate of Chengze, a Chinese state-owned-enterprise, nor a company that was subject to influence by the Chinese government. Lithium is a critical mineral listed in [Canada's Critical Minerals List](#) and is considered vital to Canada's national security because it helps to ensure Canadian energy security.<sup>[3]</sup> Under the ICA, the Minister can order foreign-controlled investors to divest investments that are found to be "injurious to [Canada's] national security."

In February 2023, Chengze indicated to the Government that it had divested its interest in Lithium Chile to Gator. However, according to the NOA, the Government never confirmed that Gator met the appropriate qualifications as a divestiture buyer prior to the divestiture taking place. Gator was described in the 2023 press release announcing the divestiture as an investment, consulting, and asset management company.<sup>[4]</sup> According to the NOA, Gator was incorporated in December 2022 with a registered corporate address in

Toronto, Canada. It has one director, Mr. Wing Hong Chan, who also serves as the company's president.

### **The Government Investigates Gator's Origins**

Throughout April and May 2023, the Foreign Investment Review and Economic Security ("**FIRES**") Branch of Innovation, Science and Economic Development Canada attempted and failed to contact Mr. Chan with the contact information provided by Chengze. This included sending Mr. Chan three separate requests for information. Additionally, the Government learned that Gator's registered corporate address was, in fact, only a rented mailbox. In late April, FIRES reached out to Lithium Chile for new contact information and was provided with an email address for Mr. Chan's assistant.

From June 8, 2023, until December 5, 2023, the Government made three formal demands to Gator under the ICA. The purpose of the first formal demand on June 8, 2023, as well as the purpose of the three initial requests for information sent in April and May, was to determine whether Gator was either Canadian controlled, a state-owned enterprise of China or subject to China's influence. The requests included questions about Gator's ownership and governance structure, the source of its funds for potential investments, its corporate relationship with Chengze, and details about Mr. Chan. The requests for information and the June 8th demand were sent via mail to the registered corporate address of Gator and to Mr. Chan's email address. A couple of the requests were also sent to Mr. Chan's assistant's email address. All registered mail was returned to sender and the emails did not generate any responses. Following Gator's failure to respond to the formal demand, on October 23, 2023, the Minister issued a declaration that Gator is not a Canadian-controlled entity, which the Minister is permitted to do where a person refuses or neglects to provide the Minister with requested information in a reasonable time frame.

Also on October 23, 2023, the Minister issued its second formal demand with this one seeking to determine if there were reasonable grounds that Gator's investment in Lithium Chile could be injurious to national security. The Government followed up this second demand with an additional request for information on November 24, 2023, seeking similar information. As with the first formal demand, the Government received no response to its second demand and its November information request.

On December 5, 2023, the Government issued its third and final formal demand, this time for the purpose of determining whether Gator's investment could be injurious to Canada's national security. As before, the Government received no response.

From December 5, 2023, onwards, the Government made numerous failed attempts, through different communication platforms, to contact Mr. Chan, until they were finally able to reach him by telephone in June 2024, which was well after the deadlines for receipt of responses to any of the formal demands and requests for information that the Government had sent. During that call, according to the NOA, Mr. Chan admitted that he

had received the inquiries and demands but continued to remain unresponsive. Despite resending the third demand after that telephone call, the Government indicates in the NOA that it has not heard from Mr. Chan again.

### **The Government Takes Enforcement Against Gator**

If a non-Canadian or any other person or entity fails to comply with a ministerial demand under the ICA, the Minister can make an application to a court for enforcement. In this case, the Government applied to the Federal Court. The Court is given a broad range of powers to direct the entity to comply with any orders it deems just under the ICA, such as abiding by the Government's demand, paying a penalty, requiring divestiture in an investment, or holding anyone who fails or refuses to comply with an order in contempt.

The Government is seeking an order from the Court against Gator for non-compliance with the Government's third demand. In the NOA, the Government asks the Court for an order directing Gator to dispose of its shares in Lithium Chile to a court-approved trustee within 30 days after the order has been issued or, if Gator fails to do so, for the Court to order that the shares be transferred from Gator to a court-approved trustee. If the Court declines to order the divestiture, the Government asks the Court to order Gator to respond to the third demand that the Government had issued to Gator in June 2024. The Government also seeks a monetary penalty against Gator as a punitive measure for not complying with the ICA.

### **What this Means for Future ICA NSR Enforcement**

- **Investors and Canadian Business Should Monitor the NSR Guidelines:** Non-Canadian investors and Canadian businesses are encouraged to continue monitoring the [Guidelines on the National Security Review of Investments](#), which has been updated [as recently as March 5, 2025](#) to include "economic security" as a new factor relevant to NSR reviews. It is important to know when a transaction might result in national security scrutiny.
- **The Government Takes National Security Seriously:** The Government appears to have given Gator and Mr. Chan ample time to respond to its requests and demands. However, if an investor is being non-compliant, the Government is willing to use formal enforcement mechanisms to further its mandate to protect Canada's national security.

Investors considering investing in Canada and Canadian businesses seeking foreign investment will want to carefully assess whether their transaction might raise issues under the ICA's NSR regime. For more information about the rules relating to inbound investments into Canada, please contact any member of McMillan's [Foreign Investment Group](#).

[1] *Attorney General of Canada v. Gator Capital Ltd.*, Notice of Application, File No. T-472-25.

[2] We note that there are other cases where investors have turned to the courts to challenge the application of the ICA's NSR regime. Most recently, an affiliate of Zijin launched a federal court challenge of the Canadian government's asserted jurisdiction to review Zijin's acquisition of Peruvian mining assets owned by Canadian vendors. That proceeding was discontinued when the parties [reached a settlement](#).

[3] *Attorney General of Canada v. Gator Capital Ltd.*, Notice of Application, File No. T-472-25 at para 9.

[4] Lithium Chile Ltd., "[Lithium Chile Welcomes Significant New Shareholder Following the Government Ordered Divestiture of Chengze's Ownership](#)", *Newswire* (Accessed 11 March 2025).

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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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