

NEW ERA OF FOREIGN INVESTMENT SCRUTINY STARTS IN CANADA WITH PASSAGE OF INVESTMENT CANADA ACT AMENDMENT BILL

Posted on March 27, 2024

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On March 22, 2024, Bill C-34, *An Act to Amend the Investment Canada Act*, received Royal Assent. As we reported in our [December 2022](#) and [October 2023](#) bulletins, the *Investment Canada Act* (ICA) amendments will enhance the Government of Canada's national security review powers and allow the Government to order "net benefit" reviews of certain investments by state-owned and state-influenced enterprises ("**SOEs**") that are currently not subject to such reviews.

Bill C-34 will come into force on one or more dates to be fixed by the Cabinet, the timing of which depends in part on the development of the regulations.^[1] Once Bill C-34 comes into force, a non-Canadian investor acquiring control of a Canadian business or obtaining certain control rights in respect of a Canadian business,^[2] where the Canadian business is engaged in yet-to-be-defined "prescribed business activities", will be required to submit a pre-closing filing with the Canadian Government and not complete the investment until a review period has terminated without triggering a national security review.

The Canadian Government has not yet defined the categories of activities that will trigger mandatory pre-closing filings, which will be identified in regulations following a consultation process. We anticipate these categories will largely mirror the broad sectors listed in the Government's [Guidelines on the National Security Review of Investments](#), which include Canadian businesses involved in the defence industry, critical minerals, critical infrastructure, critical goods and services, and sensitive technology such as artificial intelligence, among others. Additionally, based on recent policy statements from the Department of Innovation, Science, and Economic Development Canada ("**ISED**") and the Department of Canadian Heritage, which we discussed [earlier this month](#), Canadian businesses engaged in the interactive digital media sector, which includes video games, virtual reality, social media and other technology platforms that can be used for entertainment, education, training, and e-commerce, will likely be captured by the new rules. Foreign investors will, for the first time, face penalties for failing to file notifications.

In addition to the new pre-closing filing regime, Bill C-34 will also:

- expand the scope of national security reviews to apply to asset acquisitions, including acquisitions of Canadian intellectual property, even if those assets do not comprise all the assets of a Canadian business;
- permit the Government to initiate “net benefit” reviews of investments by SOEs from countries without preferential trade agreements with Canada;
- authorize the Minister of Innovation, Science and Industry to impose interim conditions and accept undertakings (which currently requires action by Cabinet) during national security reviews;
- authorize more extensive information sharing between Canada’s national security authorities and other international governments; and
- create new rules for the disclosure of sensitive information as part of judicial reviews of national security decisions.

Please contact any member of McMillan's Foreign Investment Group if you have questions about how these recent changes to ICA may impact a transaction.

[1] The Government's department of Innovation, Science and Economic Development Canada (ISED) is holding a technical briefing on Bill C-34 on the afternoon March 27th. This bulletin may be updated based on the information provided by the Government during that briefing.

[2] In particular, for the pre-closing filing regime to apply to a non-controlling investment, the non-Canadian investor must, as a result of the investment, (1) obtain access to or be able to direct the use of material non-public technical information or material assets (both terms to be defined by regulations) and (2) obtain the ability to appoint or nominate a person who has the capacity to direct the business and affairs of the entity, including a member of the board of directors, a member of senior management, a trustee, or a general partner, or to obtain any other special rights with respect to the entity that are to be prescribed by regulation.

[3] McMillan’s Foreign Investment Group thanks Mishail Adeel (Articling Student) for her contributions to this bulletin.

by [McMillan’s Foreign Investment Group](#)[3]

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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