



Latest developments in foreign investment control

Canadian lawmakers bolster investment screening regime bill

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05 October 2023

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A parliamentary committee has expanded the scope of proposed changes to Canada's foreign investment control law, recommending that the government be given a raft of new powers to scrutinise and challenge various deals.

The Standing Committee on Industry, Science and Technology last week wrapped up a five-month study on proposed amendments to the Investment Canada Act, adding several significant new provisions to the draft law.

The government originally [introduced](#) the amendment bill to parliament last December, marking the most significant proposed changes to the regime since it was introduced more than 10 years ago.

Currently, the ICA only requires filings for acquisitions of control and the establishment of a new Canadian business, but the industry committee's tweaks would give the government further powers to review deals that do not lead to changes in control.

Such an approach is a "potential game-changer", which will enable the regime to capture IP transfers and the purchases of standalone assets, said Toronto-based McCarthy Tétrault partner Michael Caldecott.

The updated bill would also empower the government to review all investments by state-owned enterprises from countries that do not have a trade agreement with Canada, while expanding the scope of the existing regime's net benefit arm to consider the impact of a transaction on government-funded IP and Canadian citizens' personal data.

Further, the committee has included a provision that would require the minister of innovation, science and industry to confidentially flag any investments that are approved or denied to the National Security and Intelligence Committee in parliament and the National Security and Intelligence Review Agency.

The amended bill also allows for the minister to publicly disclose the identities of the parties linked to those decisions, although that would not be a requirement.

The committee's amendments follow a consultation on the draft law, with much of the debate during committee hearings focusing on how the law can tackle investments by state-owned businesses.

Conservatives [sharply criticised](#) the omission of stronger rules to challenge those types of investments, while chastising the government for allowing companies with close links to the Chinese state to access critical technologies through asset purchases.

Caldecott at McCarthy Tétrault said the introduction of a "discretionary" power to conduct a net benefit review of state-backed investments into Canada will make it easier for the government to scrutinise below-threshold investments, not only against national security criteria.

The original amendment bill already focused heavily on transactions that could result in the transfer of sensitive IP, know-how and technology overseas, he added.

The committee's proposal to include IP and personal data in the net benefit arm of the regime is consistent with that stance, he said. The government in practice has already focused on this issue in recent years, with behavioural remedies more commonly requiring investors to maintain IP in Canada as part of net benefit reviews, Caldecott said.

The committee also included a provision enabling the minister to order a full national security review of investments where parties have breached anti-corruption rules, which shows that the government is not solely concerned about investors linked to hostile regimes, he added.

Joshua Krane, a partner at McMillan in Toronto, said the discretionary power targeting state-owned enterprises could be used to require such investors from China and elsewhere to potentially offer undertakings demonstrating that a transaction is of net benefit to Canada.

Not all recommendations were taken forward by the committee, including the ability to submit amicus briefs on transactions “to provide additional transparency to investors”, he noted.

The amended bill must now go before the full House of Commons for a third reading before being sent to the Senate for its consideration.

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