

Investment Canada Act カナダ投資法

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November 18, 2008

2008年11月18日

Thresholds

基準額

Non-WTO investors:

- Direct acquisition - \$5m
- Indirect acquisition - \$50m

WTO非加盟国の投資家:

- 直接買収 - \$500万
- 間接買収 - \$5000万

Thresholds

基準額

WTO investors:

- **Direct acquisition - \$295m (2008)**
- **Indirect acquisition - notice only**

WTO加盟国の投資家:

- **直接買収 - \$2億9500万 (2008年)**
- **間接買収 - 通知義務のみ**

Thresholds

基準額

4 sectors:

1. Uranium
2. Financial services
3. Transportation services
4. Cultural businesses

- Direct acquisition - \$5m
- Indirect acquisition - \$50m

4つの分野:

1. ウラン
2. 金融サービス
3. 運輸サービス
4. 文化事業

- 直接買収 - \$500万
- 間接買収 - \$5000万

“Net Benefit” to Canada

カナダの国益

1. **Effect of the investment on the level and nature of economic activity**
2. **Extent to which Canadians will participate in the business**
3. **Effect of the investment on productivity and technological development**

1. **経済活動の水準と内容に投資が及ぼす影響**
2. **投資する事業へのカナダ人の参加度**
3. **生産性及び技術開発に投資が及ぼす影響**

“Net Benefit” to Canada

カナダの国益

4. **Effect of the investment on competition**
 5. **Compatibility of the investment with national industrial, economic and cultural policies**
 6. **Contribution of the investment to Canada’s ability to compete in world markets**
4. **競争に対する投資の影響**
 5. **カナダの産業、経済、文化政策と投資の整合性**
 6. **世界市場におけるカナダの競争力向上に対する投資の貢献度**

Competition Policy Review Panel

競争政策審議会

1. Amending the Act to reduce barriers to foreign investment by increasing review thresholds
 2. Reversing the onus to require the Canadian Government to demonstrate that an investment would be contrary to the national interest before disallowing a transaction
 3. Increasing transparency and predictability
1. 審査の基準額を増やすことにより外国資本の投資への障壁を低くするよう同法を修正すること
 2. 立証責任のある側を逆にして、カナダ政府が投資を却下する前に投資がカナダの国益に反することを示さなければならぬことにする
 3. 透明性と予測可能性を高めること

Competition Policy Review Panel

競争政策審議会

4. Liberalizing investment restrictions in the Canadian air transport, uranium mining, and telecommunications and broadcasting sectors
 5. Removing the *de facto* ban on mergers in the financial services sector
4. カナダの空輸、ウラン採掘、テレコミュニケーション、放送分野の投資制限を緩和し、自由化すること
 5. 金融サービス分野での事実上の合併禁止を撤廃すること

INVESTMENT CANADA ACT

Good afternoon, everyone. I'd like to spend a few minutes discussing the regulation of foreign investment in Canada.

Like most developed countries, Canada has legislation pertaining to foreign investment. Compared to most other developed countries, however, Canada's regulations are quite limited. In Canada, foreign investors must comply with the *Investment Canada Act*. The Act's stated purpose is to "encourage investment in Canada by Canadians and non-Canadians that contributes to economic growth and economic opportunities". "Non-Canadian" is defined in the Act to include both individuals as well as corporations owned or controlled by non-Canadians.

Generally speaking, under the Act only large acquisitions in Canada by non-Canadians are subject to review by Industry Canada, which is the federal body which administers the Act. For small acquisitions and the establishment of new businesses, non-Canadians usually only have to notify Industry Canada. There are also some transactions which are exempt from either notification or review.

An investment is **reviewable** if there is to be an acquisition of a Canadian business whose asset value equals or exceeds the following thresholds:

- (i) For non-World Trade Organization (**WTO**) investors (i.e., investors not from a WTO member state), subject to certain exceptions, the threshold is \$5 million for a direct acquisition and \$50 million for an indirect acquisition.
- (ii) For direct acquisitions by or from WTO investors, the threshold is updated annually. The threshold for 2008 is \$295 million. Indirect acquisitions by or from WTO investors are not reviewable but are still subject to the notification requirement. As I'm sure you are all aware, Japan is a WTO member state, so the \$295 million threshold would apply to direct acquisitions by Japanese investors.
- (iii) There are also four sectors that are governed by the \$5 million and \$50 million thresholds regardless of whether the investor is a WTO investor or not. This threshold applies to **every** proposed acquisition of a Canadian business that:

- A. engages in the production of uranium and owns an interest in a producing uranium property in Canada;
- B. provides any financial service;
- C. provides any transportation service; or
- D. is a cultural business. “Cultural business” refers to business activities such as publishing or distribution of books and magazines, distribution of audio or video recordings, among many other activities.

When submitting an application for review, a prospective investor must demonstrate that the investment will likely result in a “net benefit” to Canada. In determining whether the proposed investment will be of “net benefit” to Canada, the Minister of Industry will consider the following factors:

- (i) the effect of the investment on the level and nature of economic activity;
- (ii) the extent to which Canadians will participate in the business;
- (iii) the effect of the investment on productivity and technological development;
- (iv) the effect of the investment on competition;
- (v) the compatibility of the investment with national industrial, economic and cultural policies; and
- (vi) the contribution of the investment to Canada’s ability to compete in world markets.

The prospective investor must address each of these factors and provide supporting documentation and financial data when submitting an application for review. Depending on the nature of and the circumstances surrounding the investment, some of these factors will be given more weight than others. The more specific the investor’s plans regarding the specific factors,

the greater the likelihood a speedy approval will be obtained. We are able to assist prospective investors in preparing the application for review package.

If the Minister advises the investor that he is not satisfied that the investment represents a “net benefit” to Canada, the Act provides an opportunity for the investor to make additional representations and undertakings to demonstrate the net benefit of the investment. Ultimately, if the Minister remains unsatisfied, a notice will be sent to the investor advising of the Minister’s decision and the investor will be prohibited from implementing the investment or, if the investment has already been made, the investor will be required to divest itself of the investment.

If the matter is reviewable, it is not uncommon for there to be significant delays. For example, negotiating the nature and terms of undertakings can be challenging and time consuming. Accordingly, as soon as the final details of a proposed transaction have been settled, it is prudent to determine whether the notification or review process is triggered and, if a review is required, commence the application process as soon as possible.

If the investment is **not** subject to review, the Act simply requires that the foreign investor notify Investment Canada. This notification requirement applies to a non-Canadian **each and every time** it commences a new business activity in Canada and **each time** it acquires control of an existing Canadian business where the establishment or acquisition of control is not reviewable. The notification must be made at any time before the implementation of the investment or within 30 days thereafter. This notification procedure is usually a formality as it is intended by Industry Canada that these investments proceed without government intervention.

Lastly, I should also mention that it is possible there will be major changes to the Act in the foreseeable future. In June of this year, the Competition Policy Review Panel released a report which included recommending changes to the Act. Specific policy recommendations made to the federal government in the report included:

- (i) amending the Act to reduce barriers to foreign investment by increasing review thresholds;
- (ii) reversing the onus to require the Canadian Government to demonstrate that an investment would be contrary to the national interest before disallowing a transaction;
- (iii) increasing transparency and predictability;

- (iv) liberalizing investment restrictions in the Canadian air transport, uranium mining, and telecommunications and broadcasting sectors; and
- (v) removing the *de facto* ban on mergers in the financial services sector.

Of course, it remains to be seen if any changes will be implemented in the near future, particularly as we now have another minority government in Canada.

I hope this presentation has been informative. Thank you very much for your attention.