

**FDI Guide
Canada**

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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

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1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	Broadly speaking, Canada is a welcoming jurisdiction for FDI. Canada is a member of the World Trade Organisation (WTO) and has 15 active free trade agreements covering 51 countries, most of which receive preferential treatment under the Investment Canada Act ¹ (ICA) – the legislation that sets out Canada’s FDI regulatory regime. Restrictions on FDI (ie, orders for divestment, the imposition of conditions on an investment or outright blockage), pursuant to the ICA, are rare. However, as discussed in more detail below, there are certain filing obligations applicable to all FDI (subject to some limited exceptions). Failure to comply can result in severe sanctions, including fines and divestment orders.
2.	Legal regime Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/...).	Canada’s foreign investment notification and review regime is governed by the ICA. As discussed in more detail below, the ICA provides for two types of review: (1) economic review (also known as a ‘net benefit review’); and (2) national security review. Responsibility for the ICA is shared between the ministries of Innovation, Science and Economic Development ² (ISED) and Canadian Heritage ³ (‘Heritage’). The Minister of Innovation, Science and Economic Development is primarily responsible for the administration and enforcement of the ICA. The Minister of Canadian Heritage is responsible for the administration and enforcement of the ICA where the investment or proposed investment involves a cultural business. All foregoing references to the ‘Minister’

¹ RSC, 1985, c 28 (1st supp).

² ISED is Canada’s economic development and corporate affairs ministry.

³ Heritage is the ministry of the federal government responsible for Canada’s arts, culture, media and communications network.

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			<p>refer to either the Minister of Innovation, Science and Economic Development or the Minister of Canadian Heritage depending upon the nature of the Canadian business control over which is being acquired or established.</p> <p>Each Minister has delegated certain authorities to a Director of Investments, called the Director of the Cultural Sector Investment Review at Heritage. All foregoing references to the ‘Director’ refer to either the Director of Investments or the Director of the Cultural Sector Investment Review depending upon the nature of the Canadian business, control over which is being established.</p> <p>Investment notifications and applications for review must be directed to the Investment Review Division (IRD) of ISED and in some cases to the Cultural Sector Investment Review Division (the CSIR) of Heritage and can be submitted by mail or electronic means.</p> <p>In the case of a national security review, the Minister of Innovation, Science and Economic Development, in consultation with the Minister of Public Safety and Emergency Preparedness, is responsible for referring investments that could be injurious to national security to the Governor in Council, who may order a review. Canada’s security and intelligence agencies are also engaged in the national security review process.</p>
3.	<p>Transactions that may be subject to FDI</p> <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>Every ‘acquisition of control’ of a ‘Canadian business’⁴ by a ‘non-Canadian’,⁵ whether direct or indirect, is subject to a filing obligation, unless an exemption applies. Where the thresholds for economic review are exceeded, the filing obligation is satisfied by submitting an ‘application for review’ to ISED or Heritage. Where the thresholds for an economic review are not exceeded, the filing obligation is satisfied by submitting a notification, rather than an application for review, to ISED or Heritage (an ‘ICA Notice’).</p> <p>In the case of corporations, ‘acquisition of control’ is considered to have occurred for purposes of the ICA when more than 50 per cent of the voting shares of a corporation have been acquired by a person or will be rebuttably presumed to have occurred when one-third or more of the voting shares of a corporation have been acquired. The presumption can be rebutted by establishing that, upon the acquisition, the corporation is not controlled in fact by the acquirer through the ownership of voting shares. Please note, however, that notwithstanding the above acquisition of control rules, the Minister has the discretion to determine that an acquisition of control has in fact occurred in relation to: (1) an investment by a state-owned enterprise; (2) an investment in the cultural sector by a non-Canadian; or (3) an investment that is subject to the national security provisions of the ICA.</p> <p>Economic review</p> <p>Under the ICA, direct and indirect acquisitions of control by non-Canadians of Canadian businesses that exceed specified monetary thresholds (see below), subject to certain exceptions, are subject to a pre-closing review and approval process carried out by the Minister using a ‘net benefit to Canada’ test. The determination as to whether an investment exceeds the</p>

4 ‘Canadian business’ is defined in the ICA as ‘a business carried on in Canada that has a place of business in Canada, an individual or individuals in Canada who are employed or self-employed in connection with the business, and assets in Canada used in carrying on the business’. ‘Business’ includes ‘any undertaking or enterprise capable of generating revenue and carried on in anticipation of profit’.

5 ‘Non-Canadian’ is a defined term in the ICA. In the case of a corporation, a ‘non-Canadian’ is generally a corporation that is ultimately controlled, through the ownership of voting shares (either through a majority voting interest or control in fact through the ownership of voting interests), by persons who are not Canadian citizens or permanent residents of Canada. If an entity is not Canadian controlled, it is a non-Canadian.

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			<p>applicable monetary thresholds is made in reference to the value of the Canadian business. The thresholds for non-cultural businesses are set out below. The thresholds for cultural businesses are set out in section 4 of this chapter.</p> <p>Trade agreement investors</p> <p>For the direct acquisition of control of a Canadian business involving a purchaser that qualifies as a ‘trade agreement’ investor, the 2022 threshold is CAD 1.711bn⁶ in enterprise value, provided that the purchaser is not a foreign state-owned enterprise.</p> <p>(a) WTO Investors</p> <p>For the direct acquisition of control of a Canadian business involving a purchaser that qualifies as a WTO member investor (‘WTO Investor’), the 2022 threshold is CAD 1.141bn⁷ in enterprise value, provided that the purchaser is not a foreign state-owned enterprise.</p> <p>(b) State-owned WTO Investors</p> <p>For the direct acquisition of control of a Canadian business involving a purchaser that is a WTO Investor, that is a state-owned enterprise, or a purchaser that is a non-WTO Investor, that is a state-owned enterprise where the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, controlled by a WTO Investor, the 2022 threshold is CAD 454m⁸ in asset value.</p> <p>(c) Non-WTO Investors</p> <p>In the very rare case of an investment by a non-Canadian investor who is not a WTO Investor and that involves the acquisition of control of a Canadian business that is not controlled by a WTO Investor immediately prior to the implementation of the investment, the threshold is CAD 5m in asset value (for a direct investment).</p> <p>National security review</p> <p>The ICA authorises national security reviews of all investments, whether implemented or proposed, of any value, by non-Canadians into Canada in situations where the Minister of Innovation, Science and Economic Development has reasonable grounds to believe that such an investment could be injurious to Canada’s national security. Under the ICA, these investments fall into one of three categories (not all of which are notifiable investments):</p> <ol style="list-style-type: none"> 1. the establishment of a new Canadian business or an entity carrying on operations in Canada; 2. the acquisition of control of a Canadian business, including a part of a business capable of being carried on as a separate business; and 3. the acquisition of all or part of an entity carrying on operations in Canada.

6 Subject to adjustment annually, based on a prescribed gross domestic product (GDP) formula.

7 See n 6 above.

8 See n 6 above.

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			<p>It bears noting that certain categories of investments falling into the third category, particularly an acquisition of part of a Canadian business that does not constitute an acquisition of control of that Canadian business under the ICA (eg, minority interests in Canadian business) are not notifiable, but may nevertheless be subject to a national security review.</p> <p>With respect to materiality thresholds, the term ‘injurious to Canada’s national security’ is not defined in the ICA. However, the Minister has released <i>Guidelines on the National Security Review of Investments</i> (the ‘Guidelines’) setting out its interpretation. The Guidelines indicate that the following non-exhaustive list of factors will be considered by the Minister in making the decision on whether to order a national security review:</p> <ol style="list-style-type: none"> 1. the potential effects of the investment on Canada’s defence capabilities and interests; 2. the potential effects of the investment on the transfer of ‘sensitive technology’⁹ or know-how outside of Canada; 3. involvement in the research, manufacture or sales of goods/technology identified as ‘controlled goods’ in the Defence Production Act (ie, weapons and other defence articles, systems and inputs); 4. the potential impact of the investment on the supply of critical goods and services to Canadians or to the Government of Canada (the ‘Government’); 5. the potential impact of the investment on ‘critical minerals’¹⁰ and critical mineral supply chains; 6. the potential impact of the investment on the security of Canada’s critical infrastructure; 7. the potential of the investment to enable foreign surveillance or espionage; 8. the potential of the investment to hinder current or future intelligence or law enforcement operations; 9. the potential of the investment on Canada’s international interests, including foreign relationships; 10. the potential of the investment to involve or facilitate the activities of illicit actors, such as terrorists, terrorist organisations, organised crime or corrupt foreign officials; and 11. the potential of the investment to enable access to sensitive personal data such as: (i) personally identifiable health or genetic information, (ii) biometric information; (iii) financial information; (iv) communications information; (v) geolocation information; and (vi) personal data concerning government officials, including members of the military or intelligence community. <p>As a practical matter, relatively few investments are subject to a national security review. Out of the 826 investment filings made under the ICA in its last fiscal year and an unknown number of additional investments by non-Canadians that,</p>

⁹ The Guidelines set out a non-exhaustive list of sensitive technology areas: (1) advanced materials and manufacturing; (2) advanced ocean technologies; (3) advanced sensing and surveillance; (4) advanced weapons; (5) aerospace; (6) artificial intelligence; (7) biotechnology; (8) energy generation, storage and transmission; (9) medical technology; (10) neurotechnology and human-machine integration; (11) next generation computing and digital infrastructure; (12) position, navigation and timing; (13) quantum science; (14) robotics and autonomous systems; and (15) space technology.

¹⁰ The Government of Canada has developed the following list of 31 minerals considered critical for the sustainable economic success of Canada and its allies. As of 29 March 2021, that list consists of the following: (1) aluminium; (2) antimony; (3) bismuth; (4) cesium; (5) chromium; (6) cobalt; (7) copper; (8) fluorspar; (9) gallium; (10) germanium; (11) graphite; (12) helium; (13) indium; (14) lithium; (15) magnesium; (16) manganese; (17) molybdenum; (18) nickel; (19) niobium; (20) platinum group metals; (21) potash; (22) rare earth elements; (23) scandium; (24) tantalum; (25) tellurium; (26) tin; (27) titanium; (28) tungsten; (29) uranium; (30) vanadium; and (31) zinc.

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			because they did not represent an acquisition of control (and, as such, did not require a filing under the ICA) were scrutinised by Canada's national security and intelligence agencies, only 23 were subjected to national security scrutiny and only 11 of those investments were subjected to a formal national security review.
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are shares transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>Notification</p> <p>An indirect acquisition of control of the assets or shares of a Canadian business is subject to an ICA Notice obligation.</p> <p>An amalgamation, merger, consolidation, or reorganisation, where the ultimate control of the entity remains unchanged, is exempt from notification.</p> <p>The establishment of a new Canadian business by a non-Canadian is subject to notification.</p> <p>Economic review</p> <p>Indirect acquisitions of Canadian (non-cultural) businesses involving WTO Investors, including state-owned enterprises, are not subject to an economic review. In the very rare case of an indirect acquisition by a non-Canadian investor who is <i>not</i> a WTO Investor and that involves the acquisition of control of a Canadian business that is not controlled by a WTO Investor immediately prior to the implementation of the investment, the investment is subject to review if the book value of the assets of the Canadian business is, or exceeds, CAD 50m.</p> <p>An amalgamation, merger, consolidation or reorganisation, where the ultimate control of the entity remains unchanged, is exempt from economic review.</p> <p>Greenfield investments are not subject to economic review.</p> <p>National security review</p> <p>The indirect acquisition of the assets or shares of a Canadian business may be subject to a national security review if, in the Minister's view, the investment may be injurious to Canada's national security, taking into account the factors discussed in section 3 of this chapter.</p> <p>Amalgamation, merger, consolidation or reorganisation, where the ultimate control of the entity remains unchanged, is exempt from the possibility of a national security review, unless the acquisition is subject to approval under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act or the Trust and Loan Companies Act.</p> <p>Greenfield investments may be subject to a national security review if, in the Minister's view, the investment may be injurious to Canada's national security, taking into account the factors discussed in section 3 of this chapter. Further, the establishment of a part of a Canadian business, even if it is not capable of being carried on as a separate Canadian business, may also be subject to national security review.</p>
		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	<p>Economic review</p> <p>With respect to economic reviews, no such powers exist other than in connection with a cultural business.</p>

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			<p>A cultural business investment that would not otherwise be reviewable is reviewable if: (1) in the opinion of the Governor in Council (federal Cabinet), it is related to Canada’s cultural heritage or national identity; and (2) within 21 days following receipt of a complete notification: (i) the Cabinet issues an order for the review of the investment; and (ii) the Director sends the non-Canadian investor a notice for review (‘Discretionary Cultural Sector Review’). While Discretionary Cultural Sector Reviews are not common, they do occur.</p> <p>National security review</p> <p>All national security reviews are discretionary.</p>
4.	Sectors falling under FDI scope	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<p>Sector-specific ownership restrictions</p> <p>There are certain economic sectors in Canada subject to special foreign ownership limitations. Examples include:</p> <p>Banking sector: Under the Bank Act, no person may own and control more than ten per cent of the shares of a bank listed in Schedule I. A similar rule applies to federally incorporated trust companies and loan companies under the Trust and Loan Companies Act.</p> <p>Insurance sector: Under the Insurance Companies Act, no person may own and control more than ten per cent of the shares of a Canadian-owned life insurance company; provincial legislation also places restrictions on foreign investment in the insurance industry.</p> <p>Broadcasting sector: The Broadcasting Act provides that broadcasting licences may not be issued to non-Canadians or to companies that are effectively owned or controlled, directly or indirectly, by non-Canadians or to companies that are effectively owned or controlled, directly or indirectly, by non-Canadians.</p> <p>Telecommunications sector: The Telecommunications Act contains quite technical foreign ownership restrictions, but which generally apply only where the target business in question accounts for more than ten per cent of total Canadian telecommunications sector revenues.</p> <p>Uranium mining sector: The Government has a policy limiting non-resident ownership in uranium-mining properties. The policy has three elements:</p> <ol style="list-style-type: none"> 1. non-resident ownership in individual uranium-mining properties, at the stage of first production, may not exceed 49 per cent; 2. non-resident ownership levels for individual production projects exceeding 49 per cent will be permitted if it can be clearly established that the project is in fact Canadian-controlled; and 3. exceptions may be granted, subject to Cabinet approval, in cases where it can be clearly demonstrated that Canadian investors cannot be found. <p>Other: Other industries where foreign investment is currently affected by federal or provincial regulation include oil and gas, farming, book publishing and selling, aviation, fisheries, liquor sales, mining, collection agencies, engineering, optometry, pharmacies and securities dealers.</p>

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			<p>Economic review</p> <p>All investments that exceed the prescribed thresholds are subject to a net benefit review, regardless of the industry or sector. However, there are stricter (ie, lower) thresholds in place for investments in cultural businesses.</p> <p>A ‘cultural business’ means a Canadian business that carries on any of the following activities, namely:</p> <ol style="list-style-type: none"> 1. the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, other than the sole activity of printing or typesetting of books, magazines, periodicals or newspapers; 2. the production, distribution, sale or exhibition of film or video recordings; 3. the production, distribution, sale or exhibition of audio or video music recordings; 4. the publication, distribution, or sale of music in print or machine-readable form; or 5. radio communication in which the transmissions are intended for direct reception by the general public, any radio, television and cable television broadcasting undertakings; and any satellite programming and broadcast network services. <p>For an investment by a non-Canadian investor that involves the acquisition of control of a cultural business, the threshold is:</p> <ul style="list-style-type: none"> • CAD 5m in asset value for a direct investment; or • CAD 50m in asset value for an indirect investment. <p>National security review</p> <p>Investments in any sector may be subject to national security review. However, a review is more likely if the Canadian business operates in an industry considered sensitive or of security importance. Accordingly, acquisitions or the establishment of a new business in the following industries should be viewed as carrying a higher risk of being subject to a national security review:</p> <ul style="list-style-type: none"> • manufacture or supply of weapons or other sensitive technology (particularly with a military use or dual military/civilian use); • manufacture or supply of security systems, software and information technology; • public health; • communications; • data and records storage (particularly relating to financial, communications, geolocation, biometric, genetic or medical information); • certain natural resources (eg, uranium or other radioactive materials);

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			<ul style="list-style-type: none"> • critical minerals; and • manufacture or supply of products that are important to the functioning of Canadian transportation, financial, power or telecommunications systems.
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>Canada is open to investment from all categories of investors and from all countries, provided that such investments are not injurious to Canada’s national security, sector-specific ownership limits are not exceeded and where the economic review thresholds specified in section 3 of this chapter are exceeded, are of net benefit to Canada.</p> <p>As discussed, there are different categories of investors, subject to different economic review thresholds, each of which are described, at a high level, below.</p> <p><i>Trade agreement investors</i> are defined to include entities and individuals whose country of ultimate control is a party to one of the following trade agreements with Canada:</p> <ul style="list-style-type: none"> • the Canada-United Kingdom Trade Continuity Agreement; • Comprehensive and Progressive Agreement for Trans-Atlantic Partnership; • Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act; • Canada-United States-Mexico Agreement; • Canada-Chile Free Trade Agreement Implementation Act; • Canada-Peru Free Trade Agreement Implementation Act; • Canada-Colombia Free Trade Agreement Implementation Act; • Canada-Panama Economic Growth and Prosperity Act; • Canada-Honduras Economic Growth and Prosperity Act; and • Canada-Korea Economic Growth and Prosperity Act. <p><i>WTO Investors</i> are nationals, permanent residents and governments of WTO member countries and entities ultimately controlled by them.</p> <p><i>State-owned WTO Investors</i> are WTO Investors that are state-owned enterprises (SOEs).¹¹ SOEs are defined broadly and include entities that are influenced, directly or indirectly, by a foreign state or state agency, as well as entities that are owned or controlled by a foreign state or state agency.</p>

¹¹ A ‘state-owned enterprise’ means:

1. the government of a foreign state, whether federal, state or local, or an agency of such a government;
2. an entity that is controlled or influenced, directly or indirectly, by a government or agency referred to in (1); or
3. an individual who is acting under the direction of a government or agency referred to in (1) or who is acting under the influence, directly or indirectly, of such a government.

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			<i>Non-WTO Investors</i> are nationals, permanent residents and governments of countries that are not WTO members and entities ultimately controlled by them. As a practical matter, this designation includes only a minority of countries – mostly rogue states.
6.	Procedure 6.1 Before or post-closing filing		Notification An ICA Notice in respect of a notifiable investment can be filed prior to or within 30 days <i>after</i> implementing the investment (ie, post-closing). The filing is mandatory. Economic review A pre-closing filing, called an application for review, is mandatory, where the relevant thresholds are exceeded. A reviewable investment may not be implemented prior to receipt of a decision from the Minister that the investment is of ‘net benefit’ to Canada. There are three exceptions: <ol style="list-style-type: none"> 1. where the Minister is satisfied that a delay in implementing the investment would result in undue hardship to the investor or would jeopardise the operations of the Canadian business and the Minister has sent a notice to the investor permitting implementation of the investment prior to completion of the review process; 2. where the investment is implemented as the result of an acquisition of control of a corporation incorporated outside of Canada; pursuant to Canada’s international commitments, indirect acquisitions by or from WTO Investors are not reviewable; and 3. where the investment is not normally reviewable, but the Government exercises its authority by Order-in-Council to review the investment because the investment involves a cultural business. National security review As discussed, whether an investment is subject to national security review is within the discretion of the Minister. If there is a risk that an investment may be subject to national security review, submission of a pre-closing ICA Notice is advisable (although not required) rather than a post-closing ICA Notice.
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	Refer to the responses above.
8.	6.3 In the case of post-closing, what are the powers of the authority?		Notification As it relates to accepting an ICA Notice, the IRD and CSIR have no powers other than to certify an ICA Notice as complete or incomplete (in which case it would simply request the outstanding prescribed information). While there are no direct or immediate consequences for failing to file an ICA Notice in respect of a notifiable investment, should the IRD come to learn that a notification was not filed, there is a risk that the Minister could send a demand letter to the investor requesting that a notification be filed or, where there are grounds to do so, commence a national security review. The consequences for failing to comply with a demand letter can be severe and may include significant monetary penalties and/or a divestment order.

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			<p>Economic review</p> <p>Not applicable (pre-closing filing is mandatory).</p> <p>National security review</p> <p>The Minister has the power to take any measures in respect of the investment that (s)he considers advisable to protect national security, including:</p> <ul style="list-style-type: none"> • authorising the investment on condition that the non-Canadian give any written undertakings relating to the investment that the Governor in Council considers necessary; or • requiring the non-Canadian to divest themselves of control of the Canadian business or of their investment in the entity.
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>Economic review</p> <p>Generally speaking, there is no option to obtain an advance ruling from the Minister that a transaction will be of net benefit to Canada. However, the ICA provides that, if a question arises as to the Canadian status of an investor that proposes to establish or acquire control of a cultural business, the Minister must provide a binding written opinion with respect to the Canadian status of the investor. Provision of a binding written opinion on any other question that may arise under the ICA may be provided by the Minister at his/her discretion.</p> <p>National security review</p> <p>By filing a pre-closing ICA Notice well in advance of implementing an investment and waiting out the expiry of the 45-day period within which the Minister must initiate or give notice (s)he intends to initiate, a national security review, investors can gain certainty as to whether a national security review will materialise prior to implementation.</p>
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	<p>As discussed, an ICA Notice is not burdensome to complete and can be filed prior to or within 30 days post-implementation.</p> <p>If the non-Canadian is acquiring a cultural business, falling under the mandatory review thresholds, the Governor in Council has 21 days following receipt of a complete notification to order a Discretionary Cultural Sector Review.</p> <p>Economic review</p> <p>A typical economic review usually takes 60–90 days, and longer reviews are not uncommon. Investors should plan accordingly.</p> <p>National security review</p> <p>If a national security review is expected, preparation should begin as soon as possible as the process can take many months. Unless extended by the Minister or on consent, the full national security review process can take roughly 180 days.</p>

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			If there is a concern that an investment being notified may be subject to national security review, the filing should be made at least 45 days prior to implementation so that the time period within which the Minister may order a national security review expires prior to implementation.
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or de jure.	<p>Economic review</p> <p>The Minister has 45 days after the date on which a complete ICA Notice was certified, by the Director, as having been received (the ‘Certification Date’) to make a decision as to whether the investment will be of net benefit to Canada. At any time during that 45-day period, the Minister may extend the review by 30 days, or any further period as agreed to by the investor and Minister.</p> <p>If at any point during the review period, the Minister is not satisfied that the investment is likely to be of net benefit to Canada, then (s)he may provisionally reject the investment, giving the investor an additional 30 days, extendible at the consent of both the Minister and the investor, to make representations and submit any undertakings that the investor believes may satisfy the Minister that the investment is likely to be of net benefit to Canada.</p> <p>National security review</p> <p>As discussed, unless extended by the Minister or on consent, the full national security review process can take up to roughly 180 days. The national security review process is generally divided into successive 45-day periods, at the conclusion of which the Minister must decide whether to terminate the process (ie, effectively clear the transaction) or to continue into the next 45-day period.</p>
12.	(iii) Negotiation with the Authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>Economic review</p> <p>During the economic review period, government officials consider the application and the net benefit submissions made by the foreign investor. Other federal government departments and affected provincial governments are consulted. Very commonly, the applicant will be asked to submit written undertakings in support of these submissions, for instance, as to employment levels and location of important offices and facilities. This can lead to intensive negotiations between the applicant and the Government. When finalised, these undertakings are legally enforceable by the Government.</p> <p>National security review</p> <p>Undertakings are also possible as part of a national security review, but in recent years have been only rarely sought by the Government.</p>
		Are there any guidelines issued by the authority?	<p>Notification</p> <p>The <i>Related Business Guidelines</i> assist investors in determining whether certain new activities carried on in Canada would be subject to a notification obligation.</p> <p>The <i>Guidelines – Acquisitions of Oil and Gas Interests</i> assist investors in determining whether various transactions involving the acquisition of interests in oil and gas properties are subject to either notification or review under the ICA.</p>

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			<p>Economic review</p> <p>The <i>Guidelines – Administrative Procedures</i> inform investors of certain procedures that will be followed in the administration of the review and monitoring provisions of the ICA.</p> <p>The <i>Guidelines – Investment by state-owned enterprises – Net benefit assessment</i> inform investors of certain procedures that will be followed in the administration of the review and monitoring provisions of the ICA.</p> <p>The <i>Dual Filing Requirements Guidelines</i> assist non-Canadians in complying with filing requirements under the ICA where the investment includes both a cultural business and a non-cultural business.</p> <p>The <i>Mediation Guideline</i> informs investors of the availability of mediation procedures in the administration of the ICA. The guideline applies where the Minister believes that a non-Canadian investor has failed to comply with a written undertaking given in relation to an approved investment.</p> <p>National security review</p> <p>The <i>National Security Guidelines</i> inform investors of the procedures that will be followed in the administration of the national security review process.</p>
13.	(iv) Filing fees	Is there a filing fee?	No.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>Notification</p> <p>An ICA Notice must contain certain prescribed information pertaining to the investor (including its board of directors, top five highest paid officers and its ultimate controller(s)), the Canadian business, and the investment itself, including a copy of the agreement of purchase and sale. In the case of a new business notification, the projected number of employees, projected total amount to be invested and projected sales or revenues during the first two years must be provided. The nationality of the ultimate controller of the investor, or in some cases, each member of the board of directors of the investor or the ultimate controller of the investor, must be disclosed. Foreign state ownership interests in an investor, whether direct or indirect, must be disclosed if more than five per cent. Otherwise, there is usually no obligation to disclose minority interests in the investor, except where a minority investor is part of a voting group that controls the investor in fact.</p> <p>Economic review</p> <p>An application for review must contain much of the same information required for an ICA Notice, as well as some additional information. The application must explain the purchaser's plans for the business for the next few years, in detail. In most cases, it will be necessary to give the Government legally binding undertakings regarding the future operation of the business.</p> <p>National security review</p>

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			No separate filing is made in connection with a national security review. However, once a national security review has been ordered, the Minister may require the non-Canadian to provide any information that the Minister considers necessary for the purposes of determining whether the investment could be injurious to national security.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	<p>Economic review</p> <p>The timeframe for issuing a decision is described in sections 10–11 of this chapter. If the Minister does not issue a final decision within the review period, the Minister is deemed to be satisfied that the investment is likely to be of net benefit, but this does not happen, as a practical manner. The Minister always extends unilaterally, or with the consent of the non-Canadian investor, where unilateral extension is no longer available, until the Minister is ready with a final decision.</p> <p>National security review</p> <p>The timeframe for issuing a decision is described in sections 10–11 of this chapter. Once a national security review has been ordered, and assuming closing has not yet occurred, the investor is not permitted to implement the investment without receiving either a notice indicating no further action will be taken or a copy of an order authorising the investment to be implemented. Implementing an investment without receipt of either, even if the Minister does not issue a decision within the statutory time limit, where no extension was sought, would carry significant risk.</p>
16.	Conditionality of approval (vii) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p>Economic review</p> <p>In most cases, it will be necessary to give the Government legally binding undertakings regarding the future operation of the business. The types of undertakings vary with the circumstances of each transaction. Generally speaking, undertakings cover Canadian employment levels (number of persons), capital expenditure and R&D expenditure levels, the preservation of a Canadian head office, the role of Canadians in senior management and the board of directors, and a wide range of other factors. Undertakings usually run for three to five years after closing but can be longer for very important businesses. Undertakings specific to governance issues are common for investors who are SOEs.</p> <p>The Director may require an investor to submit information, from time to time, that is required to permit the Director to determine whether the investment is being carried out in accordance with the application for review and any representations made or undertakings given in relation to the investment.</p> <p>National security review</p> <p>In rare cases, it may be necessary to give the Government legally binding undertakings regarding the future operation of the business in relation to national security matters. The types of undertakings that the Governor in Council has considered or imposed as a condition of approving investments on national security grounds include the following; however, in recent years, the Government seems to have favoured a simple ‘approved’ or ‘blocked’ approach rather than a middle ground involving the negotiation of undertakings:</p> <ul style="list-style-type: none"> • requiring government approval of proposed business locations in order to avoid proximity to strategic assets; • requiring that all servicing and support for some or all business lines is conducted in Canada;

	Topic	Explanation/Description of what is expected	Canada
			<ul style="list-style-type: none"> • creating approved corporate security protocols to safeguard information and access to a site; • requiring the engagement of a security-cleared compliance officer to ensure and report on compliance; • requiring third-party compliance audits on request; • requiring access to facilities for compliance and inspection; • requiring employees with access to sensitive information to attest to compliance with approved security protocols; • notifying existing customers of pending new ownership; • providing notice to the Minister of new prospective employees who would have access to sensitive information or technology as a part of their job description; and • excluding sensitive business segments or assets from a transaction.
17.	(i) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	<p>Economic review Discretionary Cultural Sector Reviews are rare. Of the 492 notifications received between 1999 and 2020, Discretionary Cultural Sector Reviews were ordered by the Minister in 66 cases (approximately 13 per cent).</p> <p>National security review All national security reviews are discretionary.</p>
18.	(ii) Risk of veto	Describe a topical case. Statistics	<p>Economic review While the Minister possesses essentially total discretion to approve or block a transaction, it is very rare for the Minister to outright veto or block a transaction. Generally, an investor will be able to negotiate a satisfactory package of undertakings to create the conditions for clearance. In its last fiscal period for which data is available as at the time of publication (1 April 2020 – 31 March 2021), only three investments were subject to an economic review and all three were cleared.</p> <p>The most high-profile case of a proposed investment being blocked on economic grounds was in August 2010, when the Anglo-Australian resource company BHP Billiton offered to acquire Potash Corp for CAD 39bn. At the time, Potash Corp controlled 53 per cent of the world’s potash reserves. Despite an extensive list of proposed undertakings and the fact that Canada has close trading relationships with the UK and Australia, the offer was withdrawn following the Minister’s interim decision that the transaction was not ‘likely to be of net benefit to Canada’.</p> <p>National security review In its last fiscal year for which data is available as at the time of publication and taking into account that there were 826 investment filings made under the ICA in that fiscal year, and the fact that Canada’s national security and intelligence agencies scrutinised an unknown number of additional investments by non-Canadians under the national security</p>

	Topic	Explanation/Description of what is expected	Canada
			<p>provisions of the ICA during that same period, which were not notifiable because they did not represent an acquisition of control:</p> <ul style="list-style-type: none"> • 23 transactions were subject to some form of formal national security review; • of these, 11 proceeded deep into the process (whereas 12 did not and therefore could ultimately proceed); and • of these 11, seven were blocked, withdrawn or ordered divested (ie, a negative outcome) and four were cleared, joining the other 12 that were cleared earlier. <p>One recent example of a transaction that was blocked was Shandong Gold Mining Co Ltd's ('Shandong') proposed acquisition of TMAC Resources Inc ('TMAC'), a Toronto-based mining company and owner of a mine in Hope Bay, Nunavut, in 2020, for CAD 230m.¹² The proposed investment was reviewed in the early days of the Covid-19 pandemic, and only a few weeks after the Government released its Enhanced Scrutiny Policy, described in section 21 of this chapter, warning that certain investments, including those linked to foreign governments, would be subject to enhanced scrutiny under the ICA. The transaction was ultimately blocked on 21 December 2020.¹³</p>
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	<p>Economic review</p> <p>The Minister of Canadian Heritage is responsible for assessing investments in Canada's cultural sector, while the Minister of Innovation, Science and Economic Development is responsible for assessing investments in all other sectors of the economy. During the review period, the Director consults other federal departments and affected provincial governments. As discussed, the Minister of Canadian Heritage leads the cultural sector review process.</p> <p>National security review</p> <p>The Minister, in consultation with the Minister of Public Safety and Emergency Preparedness, is responsible for referring investments that could be injurious to national security to the Governor in Council, who may order a review. The national security review process is supported by Canada's security and intelligence agencies and other investigative bodies.</p>
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	If an investment is carried out in contravention of the undertakings given in respect of the Minister's approval or without prior approval (where approval is required under the ICA), the Minister may impose severe sanctions (fines and divestment of the acquired business) as described below. However, it bears noting that these sanctions have very rarely been used.
		<ul style="list-style-type: none"> • breach of conditions and/or commitments attached to the approval; and 	<p>Economic review</p> <p>If an investor fails to comply with a written undertaking given in respect of the Minister's approval of the investment, the Minister can send a demand letter, requiring that it cease its non-compliance. The investor is legally required to comply</p>

¹² TMAC Resources, Press Release, 'TMAC to be acquired by SD Gold' (8 May 2020), www.businesswire.com/news/home/20200508005192/en/TMAC-to-be-Acquired-by-SD-GOLD, accessed 10 October 2022.

¹³ TMAC Resources, Press Release, 'Government of Canada Rejects TMAC Sale to Shandong Gold Mining Co., Ltd.' (21 December 2020), www.businesswire.com/news/home/20201221005788/en/Government-of-Canada-Rejects-TMAC-Sale-to-Shandong-Gold-Mining-Co.-Ltd, accessed 10 October 2022.

	Topic	Explanation/Description of what is expected	Canada
			<p>with the demand letter. If it does not, the Minister may seek an order from a superior court compelling compliance. If the court decides the Minister was justified in sending the demand letter and that the non-Canadian or other person has failed to comply, the court may make any order or orders as in its opinion, the circumstances require, including an order:</p> <ul style="list-style-type: none"> • requiring the investor divest control of the Canadian business; • prohibiting the investor from taking any action that could limit the ability of the court to subsequently issue an order to divest control of the Canadian business; • requiring the investor to comply with any written undertaking provided to the Minister; and • imposing a monetary penalty of up to CAD 10,000 per day for each day of non-compliance (beginning from the date of the contravention, not the date of non-compliance with the demand). <p>The Minister is also permitted to accept a performance bond as a security against breaches of undertakings.</p> <p>National security review</p> <p>The sanctions are the same as described above in connection with economic review.</p>
		<ul style="list-style-type: none"> • investment carried out without prior approval. 	<p>Economic review</p> <p>If an investor implements a reviewable investment without prior approval, the investor can be required to divest itself of the Canadian business or to engage in a remedial process pursuant to which undertakings must be given. If the investor does not comply, the Minister can send a demand letter, requiring that it cease its non-compliance. The investor is legally required to comply with the demand letter. If it does not, the Minister may seek an order from a superior court compelling compliance. If the court decides the Minister was justified in sending the demand letter and that the non-Canadian or other person has failed to comply, the court may make any order or orders as in its opinion, the circumstances require, including an order:</p> <ul style="list-style-type: none"> • requiring the investor divest control of the Canadian business; • prohibiting the investor from taking any action that could limit the ability of the court to subsequently issue an order to divest control of the Canadian business; • requiring the investor to comply with any written undertaking provided to the Minister; and • imposing a monetary penalty of up to CAD 10,000 per day for each day of non-compliance (beginning from the date of the contravention, not the date of non-compliance with the demand). <p>National security review</p> <p>No direct sanctions are available as prior approval is not required. However, if an investment is found to be injurious to Canada's national security post-implementation, the investor could be required to divest itself of control of the Canadian business or give legally binding undertakings to the Government, which may be quite burdensome and costly. Similar</p>

	Topic	Explanation/Description of what is expected	Canada
			sanctions would apply if the Government commenced the national security process, thereby making closing illegal, and the investor closed illegally in the face of the review.
21.	Covid – special regime	<ul style="list-style-type: none"> Please describe specific rules applicable as a result of the Covid-19 pandemic. 	<p>On 18 April 2020, the Minister of Innovation, Science and Economic Development released a policy statement announcing that certain foreign investment into Canada would be subject to enhanced scrutiny under the ICA in light of the Covid-19 pandemic (the ‘Enhanced Scrutiny Policy’). Under the Enhanced Scrutiny Policy, the Government will more closely scrutinise:</p> <ol style="list-style-type: none"> investments, both controlling and non-controlling, of any value in Canadian businesses that are ‘related to public health or involved in the supply of critical goods and services to Canadians or to Canadian governments’; and investments of any value by foreign state-owned enterprises and private investors assessed as being closely tied to or subject to direction from foreign governments. <p>The Enhanced Scrutiny Policy is expected to be an enduring part of Canada’s foreign investment review process for the foreseeable future.</p>

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