Goodmans LLP Update

Canadian Foreign Investment Review – What to Expect in 2020

While Canada – like the rest of the world – is grappling with the COVID-19 pandemic, the Canadian government continues to review foreign investment in Canada. Below are notes about the status of Canadian foreign investment review in light of COVID-19:

- ***Impact of the COVID-19.*** The Investment Review Division (IRD) and Cultural Sector Investment Review Division (CSIRD) are continuing to operate during the COVID-19 pandemic. While the government's response to the pandemic is fluid, at the present time, investors can expect the following:

    a. IRD and CSIRD staff are engaging with investors and **continuing to review ongoing matters** to make "net benefit" determinations.

    b. Investors should **anticipate that the timeline to obtain a "net benefit" approval may extend beyond the typical 75 days** due to COVID-19.

    c. **Review thresholds** under the Investment Canada Act are set by statute, and are **unlikely to be amended in light of the COVID-19 pandemic**. This is in contrast to Australia where a Ministerial decree temporarily changed the financial threshold to $0, subjecting all foreign investments to an approval review as a result of COVID-19.

- ***2020 Review Thresholds.*** All direct or indirect 'acquisitions of control' of a Canadian business, or the establishment of a new business in Canada by a 'non-Canadian' investor, remain subject to the *Investment Canada Act*. Investments that exceed the applicable financial thresholds are subject to pre-closing review and "net benefit" approval. The thresholds vary based on the investor's identity and whether the Canadian business is 'cultural'. For 2020, the thresholds are:

    a. An investor from a country with a '**trade agreement**' with Canada that directly acquires a Canadian business with an enterprise value of more than **C$1.613 billion**, is subject to pre-closing review and approval;

    b. An investor from a country that is a **WTO member** that directly acquires a Canadian business with an enterprise value of more than **C$1.075 billion**, is subject to pre-closing review and approval;

    c. An investor that is a **state-owned enterprise** that directly acquires a Canadian business with assets whose book value exceeds **C$428 million**, is subject to pre-closing review and approval; and

    d. **All other thresholds** (including for investors from non-WTO countries and for the acquisition of cultural businesses) **remain unchanged**.

- ***UK Investors Post-BREXIT.*** On January 31, 2020, the United Kingdom officially withdrew as a member of the European Union, but under the *UK and EU Withdrawal Agreement*, there is a transition period during which the United Kingdom will continue to be part of international treaties that the European Union has with third countries, including the *Comprehensive Economic and Trade Agreement* (CETA) with Canada. As a result, United Kingdom private investors continue to benefit from the 'trade agreement' review threshold during the transition period until at least December 31, 2020.

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- ***National Security Remains Top Priority.*** During the COVID-19 pandemic, the IRD will continue to review all investments for potential implications for Canada's national security. This is particularly true for investments in sensitive industries, including natural resources, oil and gas, and communications and technology. Over the past year, the IRD issued an increasing number of national security review notices, but stopped short of ordering a full national security review in a number of cases. As a result, many investors now submit pre-closing notifications to gain certainty as to whether they will be subject to a national security review.

If you have any questions about these new developments or notification thresholds, please contact any member of our Competition, Antitrust and Foreign Investment Group.

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