

Korea Team Report

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IN THIS ISSUE

p.1

Telecommunication

p.2

Uranium mining

As the Chair of BLG's Korea Team, I am pleased to provide this brief report on the Canadian federal government's annual key policy announcement– the "Throne Speech" – delivered on March 3 which would be of interest to BLG's clients and contacts in Korea.

The Throne Speech announced the Canadian government's intention to (i) "open Canada's doors further to foreign investment in key sectors, including the **satellite and telecommunications industries,**" and (ii) "ensure that unnecessary regulation does not inhibit the growth of Canada's **uranium mining industry** by unduly restricting foreign investment."

Telecommunication

At present, foreign ownership rules for telecom carriers may be summarized as follows:

- i) at least 80% of the members of the board of directors of the carrier must be Canadian;
- ii) non-Canadians may not beneficially own, directly or indirectly, more than 20% of the carrier's voting shares;
- iii) non-Canadians may not beneficially own directly or indirectly more than 33 1/3% of the voting shares of the carrier's holding company; and
- iv) the carrier or the holding company may not otherwise be controlled by non-Canadians (i.e., "control in fact").

Since the focus of these requirements is voting shares, foreign investors often seek to maximize ownership through non-voting securities. So long as the 20% limit at the carrier level and 33 1/3%

limit at the holding company level for non-Canadian ownership of voting shares are respected, the question of compliance shifts to whether the carrier's ownership structure satisfies the highly fact-specific "control in fact" test. In December 2009, Industry Minister overturned a ruling by the Canadian Radio-television and Telecommunications Commission on Globalive, by ruling that start-up mobile operator met Canadian ownership and control requirements under the Telecommunication Act. The minister decided that Globalive – 65% owned by Egypt's Orascom Telecom but technically meeting legal requirements on the basis of Canadian-held voting shares – did not need to make any changes to its ownership structure.

There is a general sense that it is only a matter of time before the rules are relaxed, at least in the cellular sector. In 2008, the Competition Policy Review Panel recommended reducing or eliminating foreign ownership restrictions for network infrastructure-based operators.

In a television interview following the Throne Speech, Industry Minister confirmed the government's desire to liberalize foreign ownership restrictions in the telecom sector. Asked how it will happen and when we will see details, the minister said that the government is in the process of examining the necessary legislative changes and that people should "stay tuned."

Uranium mining

Canada is the world's largest uranium producer, accounting for about 22% of world output in 2009.

Non-Resident Ownership Policy on the Uranium Sector sets out the current federal government policy on non-resident ownership of uranium mining sector. Pursuant to this policy,

foreign ownership of uranium mining projects in Canada is effectively capped at 49%. There are two exemptions to the limit for foreign ownership and they are granted when it is clearly established (i) that the project is 'Canadian-controlled' as defined under the Investment Canada Act ("ICA") or (ii) that Canadian partners cannot be found.

Pursuant to s.26(1) of the ICA, "a Canadian-controlled entity" is defined as "where one Canadian or two or more members of a voting group who are Canadians own a majority of the voting interests of an entity" or "the entity is not controlled in fact through the ownership of its voting interest by one non-Canadian or by a voting group in which a member or members who are non-Canadians own one-half or more of those voting interests of the entity owned by the voting group". Pursuant to s.26(6) of the ICA, where two persons own equally all of the voting shares of a corporation and at least one of them is a non-Canadian, the corporation is not a Canadian-controlled entity.

Like the telecom sector, the government's move to liberalize uranium mining sector comes after the Competition Policy Review Panel recommendation in 2008 to liberalize non-resident ownership on uranium mining, subject to new national security legislation;

and securing market access benefits for Canadian participation in uranium resource development outside of Canada, or access to processing technology. The liberalization of ownership on Canadian uranium for Korean investors appear inevitable since Korea already has liberalized its policy with respect to foreign ownership of Korean uranium mining sector. We also note that Canadian TSX-V listed company, Oriental Minerals Inc., presently has uranium mining interests in Korea.

Along with liberalizing the uranium sector, the government said that it would "untangle the daunting maze of regulations that needlessly complicates project approvals" in Canada's broad resource sector. The plan is to replace them with "simpler, clearer processes" that would provide "improved environmental protection" and greater certainty to industry.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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