

Federal Government's 2017 Budget Bill Now In Force

June 29, 2017

Introduction

The Canadian federal government's budget implementation legislation of 2017 ("Bill C-44") is now in force, along with its amendments to the Investment Canada Act (the "ICA"). These amendments will be of interest to any non-Canadian wishing to acquire control of a Canadian business.

As discussed in our previous bulletin, the amendments to the ICA significantly increase a key financial threshold that triggers pre-closing "net benefit" review of proposed acquisitions of control of Canadian business by foreign investors.

Background

The ICA is Canada's legislation that governs reviews of foreign investments in Canada. It contains two separate review processes to which foreign investments may be subject:

1. A review process which considers generally whether an acquisition of control of a Canadian business by a foreign investor would be of net benefit to Canada (Net Benefit Review); and
2. A discretionary review process which considers whether a foreign investment in Canada could injure Canada's national security (National Security Review).¹

Whether a Net Benefit Review of an acquisition is required turns on whether the value of the target Canadian business exceeds the applicable financial threshold. If the value of the target business exceeds the applicable threshold, investors must file an application for Net Benefit Review with the Investment Review Division (IRD), and observe a waiting period of up to 75 days prior to closing the investment. In order to secure approval under this process, investors must satisfy the relevant federal Minister that the investment is likely to be of "net benefit" to Canada, having regard to certain evaluative factors set out in the legislation. To do this, investors typically give enforceable **undertakings to the Minister that address these factors - for example, commitments on employment levels, economic activity, innovation, global competitiveness, and the participation of Canadians in management and on the board.**

The New Threshold

Now that Bill C-44 is in force, a direct acquisition of control of a Canadian business by a non-Canadian investor controlled in a World Trade Organization member state (a “WTO Investor”) is subject to Net Benefit Review by the Minister of Innovation, Science, and Economic Development where the enterprise value² of that Canadian business exceeds CAD \$1 billion.

Under the previous legislation, the threshold was CAD \$800 million.

Investors Controlled in Certain Countries Will Benefit from Further Increased Thresholds when CETA Comes into Force

In addition to the Bill C-44 amendments, the legislation (“Bill C-30”) enacting the Comprehensive Economic and Trade Agreement with the European Union (“CETA”) will further increase the Net Benefit Review threshold for all foreign investors controlled in a country that is a party to CETA or another country with a trade agreement in place with Canada (a “Trade Agreement Investor”) to CAD \$1.5 billion. This includes investments by entities controlled in the United States, Mexico, Chile, Peru, Colombia, Panama, Honduras, and South Korea.

Bill C-30 received Royal Assent earlier this year and is expected to be proclaimed into force shortly.

Thresholds for Other Types of Transactions are Unchanged

The Amendments to Bill C-30 and Bill C-44 do not affect the other Net Benefit Review thresholds under the ICA, which apply to different types of transactions, including:

- Acquisitions by non-Canadian investors that are state-owned or controlled (“SOEs”);
- Acquisitions of target Canadian businesses that are engaged in “cultural” activities (e.g. in the film/TV, music, or publishing sectors); and
- Acquisitions by investors that are controlled in states that are not WTO members.

It also remains the case that foreign investments that do not exceed the applicable threshold for Net Benefit Review must be notified to the IRD no later than 30 days after closing.

¹ For more information about the national security review process, please see “National Security Guidelines seek to provide clarity to foreign investors, but uncertainty remains” (22 December 2016).

² The methodology for calculating enterprise value depends on the structure of the transaction (i.e. whether it is an acquisition of shares or assets) and whether the shares of the target are privately held or publicly traded.

By

[Subrata Bhattacharjee, Ian Li,](#)

Expertise

[Competition/Antitrust and Foreign Investment](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.