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Impact for Investors of Canada's Implementations of Its Commitments Under Convention on Cluster Munitions

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Canada has implemented its commitments under the 2008 international *Convention on Cluster Munitions* by ratifying the Convention and bringing national legislation, the *Prohibiting Cluster Munitions Act* (*Cluster Munitions Act*), into force on March 16, 2015[1] and this might be of interest to investors and fund managers.

The *Cluster Munitions Act* prohibits the use, development, production, acquisition, possession, import or export of cluster munitions, explosive submunitions and explosive bomblets (collectively, "cluster munitions"), as well as the foreign movement thereof for purposes of transferring their ownership and control. It also prohibits attempting to commit, or aiding, abetting, counselling or conspiring to commit, such a prohibited act and providing assistance after a prohibited act.

The *Cluster Munitions Act* does not explicitly prohibit financial investments in cluster munitions, contrary to the legislation of certain other countries that have enacted the international *Convention on Cluster Munitions*. That being said, Canadian government representatives have repeatedly asserted during Canadian parliamentary debates that direct and intentional investments in entities that engage in an act prohibited by the *Cluster Munitions Act* are prohibited under the Act's aiding or abetting prohibition.

It is unclear how the *Cluster Munitions Act* would be applied to specific investment scenarios because of the absence of explicit wording in the Act and the requirement that an offence under the Act be committed with both knowledge and intent. We expect that if investments are in fact prohibited under the *Cluster Munitions Act*, its application is likely to vary depending on the specific facts, including the type of investment, the nature of the securities and the assessment of the intent of the investment. In this respect, a case-by-case analysis would be required to assess the likelihood that a particular investment is prohibited or not under the *Cluster Munitions Act*.

[1] The Convention will enter into force internationally with respect to Canada on September 1, 2015.

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