

Investment

Canada Announces Upcoming Review Of Investment Canada Act

By Mark Katz and John Bodrug
(Davies Ward Phillips & Vineberg LLP)

On November 23, 2006, the federal Minister of Finance, the Honorable Jim Flaherty, announced that the Canadian government will undertake a review of the *Investment Canada Act* ("ICA"), which governs investments by non-Canadians to acquire control of Canadian businesses.

The intention to review the ICA is set out in a document entitled *Advantage Canada*, which describes the government's long-term plan for making Canada a "true world economic leader". Among other things, the plan comments on the benefits of foreign direct investment in Canada in providing additional capital to fuel firms' growth and expose domestic firms to new technologies, innovative ways of doing business and healthy competition.

According to *Advantage Canada*, a review of the ICA is appropriate because the statute has not been amended significantly since its adoption in 1985, notwithstanding "dramatic changes in the world economy" in the interim. The plan notes that "Canada's share of total inward foreign investment directed to the G7 and OECD countries has been failing"; the OECD has reported that Canada has the highest level of explicit restrictions on foreign-equity ownership in the G7; and screening procedures under the ICA "can limit opportunities for Canadian firms competing in a global economy to attract expertise, strengthen their networks and pursue new business opportunities". The plan also comments that the ICA, like other restrictions on foreign ownership in Canada, may create the perception that "Canada is not fully open to foreign investment".

The goal of the ICA review will be to ensure that Canada's foreign investment legislation is in line with best practices in other jurisdictions and maximizes the benefits of foreign investment while retaining Canada's ability to protect its "national interests" on a principled basis. For example, the plan suggests that one (rare) instance in which government intervention may be justified is when a large state-owned enterprise

with non-commercial objectives and unclear corporate governance and reporting procedures attempts to acquire a Canadian business.

It would appear that the direction proposed by the current Canadian government is to reduce the scope or application of the ICA to foreign investment in Canada generally, but perhaps to proceed with proposed amendments to the ICA that would give the government greater powers to review and block or

unwind foreign investments that raise national security concerns.

The Department of Finance's press release, with a link to *Advantage Canada*, is available at <http://www.fin.gc.ca/news06/06-069e.html>.

Mark Katz (mkatz@dwpv.com) and John Bodrug (jbodrug@dwpv.com) are both Partners at Davies Ward Phillips & Vineberg LLP and members of the Competition & Foreign Investment Review group in the Toronto office.
