

British Columbia - Saskatchewan Minerals Investment Forum 2009

Hosted by BC Ministry of Energy, Mines and Petroleum
Resources and SK Ministry of Energy and Resources

October 26 and 29, 2009

Tokyo, Japan and Seoul, Korea





Competition Act – Merger Review Changes:

- ④ New Merger Notification and Review Regime:
 - ④ Same \$400M size-of-parties threshold
 - ④ Increased size-of-transaction threshold
 - ④ From \$50M to \$70M (and indexed hereafter)



④ New Two- Stage Review Process

- ④ One notification form with 30-day waiting period
- ④ Competition Bureau can issue request for additional information (supplementary information request)
 - ④ Triggers new 30-day waiting period, commencing on date when complete response to second request is submitted



- © New Merger Review Process as of September 18, 2009

- © [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/merger_review_process-e.pdf/\\$FILE/merger_review_process-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/merger_review_process-e.pdf/$FILE/merger_review_process-e.pdf)

- © Mergers may be challenged up to one year after closing (down from 3 years)



Investment Canada Act - Changes

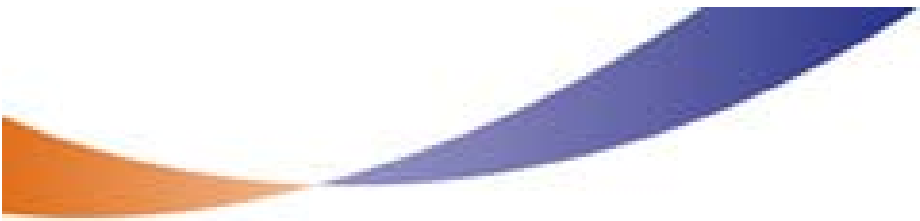
⦿ **Topics Include:**

- ⦿ Change to Threshold for Review of Investments
- ⦿ Removal of Certain Sensitive Industries
- ⦿ Impact of National Security Provisions
- ⦿ National Security Reviews



④ Impacts on Direct Acquisitions Involving WTO Investors:

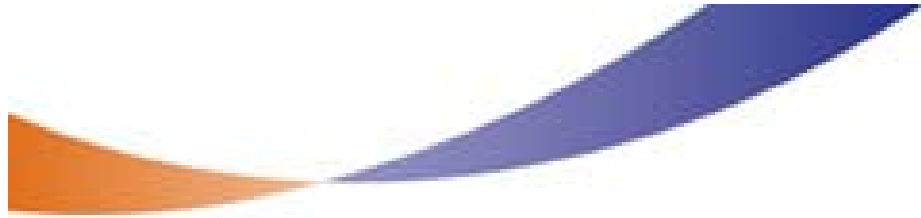
- ④ Acquisition of control either resulting from the acquisition of the voting interests of a Canadian entity carrying on a Canadian business, or all or substantially all of the assets of a Canadian business.
- ④ Current Monetary Threshold: \$312 million of asset gross book value (indexed).

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- ⦿ Proposed Monetary Threshold:
 - ⦿ \$600 million of enterprise value increasing to \$800 million and then \$1,000,000,000 (indexed thereafter).
 - ⦿ Intent is to limit “Net Benefit” test to larger transactions.



④ **New Valuation Test:**

- ④ **Old:** Asset Value = book value of the assets as at the most recent year end.
- ④ **New:** Enterprise value = for public companies add the corporation's market capitalization (including preferred stock) and outstanding debt together and then subtract its balance sheet cash and cash equivalents; for private companies, draft regulations propose retention of asset gross book value.



- ⦿ **Timing:**

- ⦿ Change to thresholds will occur only after new regulations come into force – likely Fall, 2009



◉ Removal of Certain Sensitive Industries

- ◉ **Old:** Canadian businesses involved in uranium mining, transportation services, financial services or cultural activities were not eligible for the WTO investor threshold for both direct and indirect acquisitions. Notification and review required if asset value of \$5 million for direct transactions.
- ◉ **New:** Only “cultural businesses” will not be eligible for the WTO investor thresholds.



- ④ **“Net Benefit” to Canada Test:**

- ④ Minister is now required to provide reasons for any determination that an investment is not of net benefit (s.23.1)

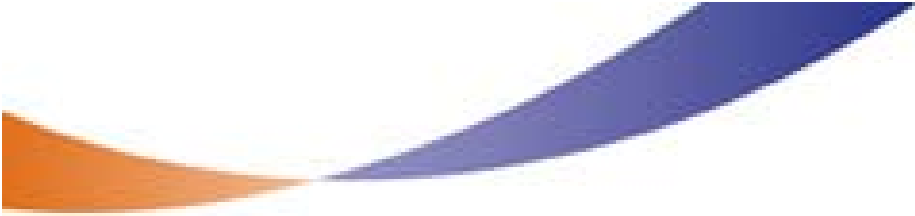
- ④ **Note:** 49% Non-resident ownership restriction on Uranium properties continues by Canadian government, with possible exceptions. SEE:

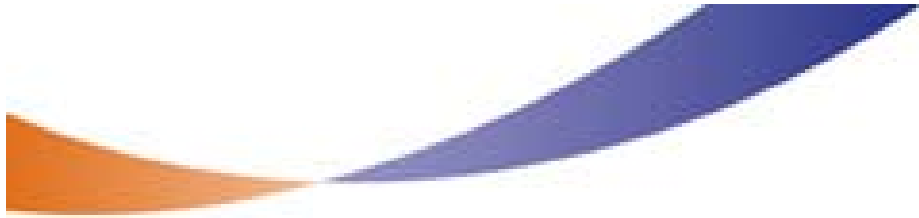
<http://www.nrcan.gc.ca/eneene/sources/uranuc/uranium/respol-eng.php>



⑥ **New National Security Provisions:**


- ⑥ Should an investment potentially involve a “national security” issue, the Federal Cabinet may order a security review.
- ⑥ Security review is separate from net benefit review and could affect the customary review periods under which the *Investment Canada Act* operates by extending them.

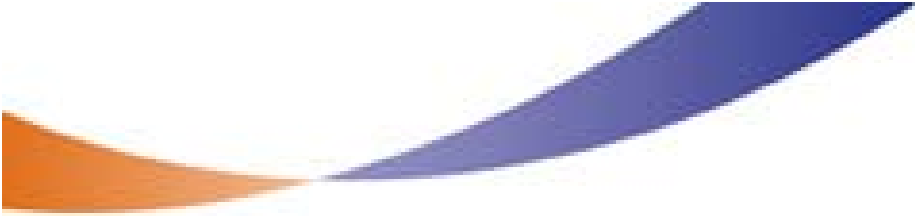
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- ④ Effective as of February 6, 2009, new ss. 25.1-25.6
 - ④ Where review is required, investor has right to make representations to Minister and discuss proposed investment (s. 25.3(2) and (4))
 - ④ National Security review can be triggered by:

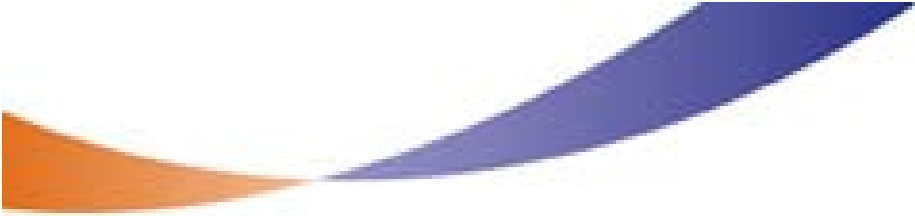


- ⦿ change in control of an existing Canadian business;
- ⦿ the establishment of a new Canadian business; or
- ⦿ acquisition in whole or in part, or establishment, of an entity carrying on all or any part of its operations in Canada if there is a place of operations, employees or assets in Canada.

Therefore could include minority investments.

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- ⑥ Government has stated its intent to ensure this provision is applied to true National Security issues and is administered in keeping with all international trade obligations, including WTO rules.
 - ⑥ Review can be required by the Minister of Industry alone. However, the Minister must consult with Minister of Public Safety before making a review recommendation to the Governor-in-Council (Federal Cabinet) s. 25.3(1). Only Cabinet can order a security review (s.25.3) and notice must be sent to investor.

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- ⦿ Time periods for consideration of possible review start when Minister of Industry “becomes aware” of investment, and continues for up to 45 days after later of certification of application regarding reviewable investments; certification of notification of notifiable investments; or date of implementation for other investments. Draft regulations provide detail.

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- ④ No specific guidance given regarding industries or review parameters. Case by case analysis
 - ④ Investors should consider early notification and “no review” confirmations (s.25.4(2)(a)) where industry may raise security question or investment is financially significant. Position of Industry Canada in this request not yet settled.

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- © See “National Security – Review of Investments Regulations” registered on September 17, 2009. SEE page 158 -165 : <http://www.gazette.gc.ca/rp-pr/p2/2009/2009-09-30/pdf/g2-14320.pdf>



© Additional Information:

- © For state-owned enterprises, net benefit will include Review of Governance Provisions and Commercial orientation. See “Guidelines: Investment by State-Owned Enterprises – Net Benefit Assessment. SEE:

<http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk00064.html#state-owned>



© Additional Information:

- © Acquisition involving issuance of stock. See TSX Rules requiring shareholders vote of issuance of greater than 25% of dilution of issued and outstanding shares . Parallels private placement. SEE:
http://www.tmx.com/en/news_events/news_releases/9-25-2009_TSX-AquisitionsThreshold.html



Recent Transactions of Interest

- ⑥ China Investment Corporation investment in Teck Resources (US \$1.5 Billion. 17%)
 - ⑥ Minority interest by Private Placement SEE:
<http://www.teck.com/Generic.aspx?PAGE=Media+Pages%2fMedia+Detail&releaseNumber=09-26-TC&portalName=tc>
<http://www.teck.com/Generic.aspx?PAGE=Media+Pages%2fMedia+Detail&releaseNumber=09-23-TC&portalName=tc>
- ⑥ Sinopec International Petroleum Exploration and Production Corporation / Addax Petroleum Corporation – CND \$9.2 Billion
 - ⑥ Friendly take-over bid of oil and gas reserve in Nigeria and Iraq SEE: http://www.addaxpetroleum.com/press_room/162



Recent Transactions of Interest

- ⑥ Jilin Jien Nickel Industry Co., Ltd. Bids for Canadian Royalty Inc.
 - ⑥ Friendly take-over bid SEE:
http://www.canadianroyalties.com/2/pdf/press_releases/2009/CZZ_2009-10-16_CZZ-JJ_EN.pdf
- ⑥ PetroChina International Investments Inc. / Athabasca Oil Sands Corp.
 - ⑥ Direct investment in petroleum resources SEE:
<http://www.tradingmarkets.com/.site/news/TOP%20STORY/2504862/>



Recent Transactions of Interest

- ⦿ KOGAS / Kitimat LNG

- ⦿ Natural Gas SEE:

- <http://www.marketwire.com/press-release/Kitimat-Lng-Inc-997610.html>

- ⦿ Eldorado Gold Corporation and Sino Gold Mining Limited

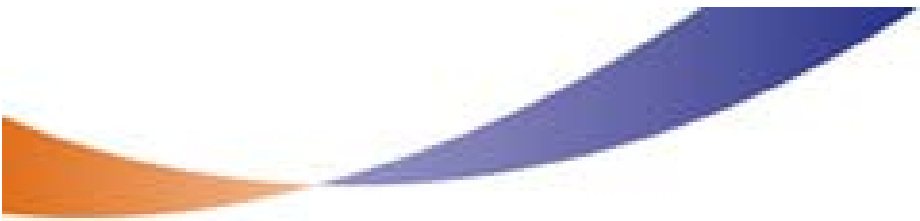
- ⦿ Merger of Canadian and Australian mining company with Gold Resources in China SEE:

- <http://www.marketwire.com/press-release/Eldorado-Gold-Corporation-TSX-ELD-1035670.html>



Recent Transactions of Interest

- ⦿ Compliance Coal Corporation / ITOCHU Corporation / LG International Corporation
 - ⦿ Coal SEE:
http://www.complianceenergy.com/compliance/comox_joint_venture.shtml
- ⦿ KEPCO Investment / Denison Mines
 - ⦿ Natural Gas SEE:
<http://www.marketwirecanada.com/press-release/Denison-Mines-Corp-TSX-DML-973986.html>

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- ④ Update on the National Securities Regulator in the power point. The linked article is relevant:
 - ④ <http://www.theglobeandmail.com/globe-investor/2012-target-set-for-national-securities-regulator/article1300022/>



Questions / Notes



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