Canada Gets Tough on Chinese Investors

Last year saw a fundamental shift in Canada's trade policy. As the year dawned, Canada still permitted, perhaps even welcomed, investments by Chinese companies. By the end of 2022, however, the government had adopted what amounts to a complete ban on Chinese investment in Canadian firms that operate in critical sectors of the economy, particularly critical minerals.

The government now assumes that all Chinese firms are "state-influenced" and will treat them as though they were state-owned. It will likely block even minority investments by Chinese firms, especially if additional rights, such as offtake or board seats, are granted. The government will intervene even if the critical minerals assets are located entirely outside of Canada.

To support this new policy, the government plans to amend the Investment Canada Act to extend notification requirements to minority investments in certain industries and give itself new powers to impose conditions and accept undertakings.

Rapid evolution

The shift in Canada's trade policy became official with the Indo-Pacific Strategy that the government released on November 27, 2022. In the strategy, the government says it will act "decisively when investments from state-owned enterprises and other foreign entities threaten our national security, including our critical minerals supply chains." The foreign entities that the government is most concerned about are from China. According to the strategy, China is "an increasingly disruptive global power" that is "looking to shape the international order into a more permissive environment for interests and values that increasingly depart from ours."

The Indo-Pacific Strategy is the culmination of a rapid evolution in Canadian government policy towards investments by Chinese companies. In early 2022, the government received a storm of bad press after it allowed a Chinese mining company (Zijin Mining) to buy an Ontario-based company (Neo Lithium) that owned a lithium project in Argentina without conducting a formal national security review. In response to the backlash, a Parliamentary Committee recommended that all investments in Canadian firms by state-owned and state-influenced firms from authoritarian regimes should go through a formal national security review.

Russia's invasion of Ukraine and China's saber-rattling the Taiwan Strait led to new urgency to a policy change that was already underway. On October 11, 2022, in a major speech at the Brookings Institution, Canada's Deputy Prime Minister Chrystia Freeland announced a shift in Canada's trade patterns away from China's "increasingly aggressive wolf diplomacy" and toward other democracies—a shift known as "friendshoring."

State-owned or influenced enterprises need not apply

The government followed up with a new policy on foreign investments from state-owned enterprises in critical minerals on October 28, 2022. The policy is blunt: investments in Canadian critical minerals companies by foreign state-owned enterprises or foreign-influenced private investors "will support a finding by the Minister that there are reasonable grounds to believe that the investment could be injurious to Canada's national security."

The government made good on this warning the following week. On November 2, 2022, it ordered three Chinese companies to sell shares they acquired in Canadian lithium companies:

- Sinomine (Hong Kong) Rare Metals Resources Co., Limited was required to sell its 5.64% interest in Power Metals Corp.
- Chengze Lithium International Limited was required to sell its 19% interest in Lithium Chile

Michael Osborne

Chair, Canadian Competition Practice

mosborne@cozen.com
Phone: (647) 417-5336
Fax: (416) 361-1405

Related Practice Areas

- Antitrust & Competition
- Commercial Litigation

Inc.

- Zangge Mining Investment (Chengdu) Co., Ltd. was required to sell its minority interest in Ultra Lithium Inc.

Implications for future national security reviews

These new policies and divestiture orders raise three implications for future national security reviews under the Investment Canada Act:

1. **China = State-Owned:** The government does not differentiate between state-owned and state-influenced enterprises from China. Sinomine and Zangge are not state-owned; they are subsidiaries of publicly listed Chinese companies. The definition of a state-owned enterprise in the Investment Canada Act encompasses enterprises that are influenced, directly or indirectly, by a government or government agency. The Canadian government appears to consider that any corporation headquartered in China (including Hong Kong) is state-influenced and thus state-owned for the purposes of the Act.
2. **Minority Investments Will be Blocked:** The government will not tolerate even minority investments in Canadian critical minerals companies, especially if the Chinese company obtains additional rights. For example, Sinomine's interest in Power Metals was a mere 5.65%. However, Sinomine also obtained an offtake agreement entitling it to a share of production, and the project is located in Canada, which may have been aggravating factors. Similarly, Chengze bought just under 20% of Lithium Chile, but it also obtained the right to nominate two directors to Lithium Chile's board.
3. **Location of Assets is Not Relevant:** The government is willing to use the Investment Canada Act to assert control over assets located in other countries, with apparently no concern for how those other countries might react. Lithium Chile and Ultra Lithium's projects are located in Chile and Argentina; neither company has any mineral assets in Canada.

In sum, any investment, of any size, by a Chinese entity in a Canadian-based critical minerals company will likely be subjected to a national security review and blocked by the government.

What's next?

The Indo-Pacific Strategy makes clear that Canada's interests are increasingly adverse to China's and that Canada's trade will continue to move away from China and toward other Indo-Pacific countries—in common with other Western countries. The strategy promises to deepen relationships with other countries in the region and increase intelligence gathering and Canada's military presence in the region.

At home, the government will "strengthen the defense of our Canadian infrastructure, democracy, and Canadian citizens against foreign interference." More concretely, the government plans to review all mechanisms and structures across all federal departments "to ensure they advance Canada's national interests." This suggests we may see more changes in government policies and programs.

Indeed, amendments to the Investment Canada Act's national security review provisions promised in the Indo-Pacific Strategy were introduced into Parliament just one week after the strategy was released, on December 7, 2022. These amendments extend notification requirements to all investments in certain industries and give the Minister of Innovation, Science, and Industry new powers to impose conditions and accept undertakings. They will likely come into force sometime in 2023. For more details, see *Canada Proposes Sweeping National Security Updates to Investment Canada Act.*