Foreign Investment in Canada: Navigating the Investment Canada Act From Net Benefit to National Security

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Blakes Means Business

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As one of Canada's top business law firms, Blake, Cassels & Graydon LLP (Blakes) provides exceptional legal services to leading businesses in Canada and around the world. We focus on building long-term relationships with clients. We do this by providing unparalleled client service and the highest standard of legal advice, always informed by the business context.

Overview of the Investment Canada Act

Canada's foreign investment landscape is undergoing its most significant transformation in a generation. The *Investment Canada Act* (ICA) regime has shifted toward a national security-oriented framework, with new mandatory pre-closing filing obligations forthcoming, and the federal government recalibrating its stance toward potential investors from China and the Middle East. At the same time, mitigation agreements have become an indispensable tool for foreign investors seeking regulatory approval.

The ICA applies to all investments in Canada by non-Canadians, including minority investments, indirect acquisitions arising through the acquisition of a non-Canadian parent entity and outright acquisitions of Canadian firms. The purpose of the ICA is "to provide for the review of significant investments in Canada by non-Canadians in a manner that encourages investment, economic growth and employment opportunities in Canada and to provide for the review of investments in Canada by non-Canadians that could be injurious to national security."

The administration and enforcement of the ICA by the Government of Canada is closely intertwined with domestic and international political considerations and concerns about Canada's economic and national security. In the face of ongoing geopolitical uncertainty and shifting trade relationships, the ICA is a key component of the government's toolkit in fostering investment in Canada while simultaneously safeguarding Canadian interests, with important implications for Canadian businesses and foreign investors alike.

When acquiring control of a Canadian business or establishing a new Canadian business, a foreign investor is required to submit a filing. For most investments, the non-Canadian investor is only required to submit a simple notification form and undergo a national security screening, which must be submitted either before or within 30 days of the investment being implemented.

Where the relevant financial threshold is met, an investment is instead subject to a suspensory pre-closing review to determine whether it is likely to be of "net benefit" to Canada.

For 2026, the relevant thresholds for a pre-closing review of a direct acquisition of control of a Canadian business are as follows:

- **Trade Agreement Investors:** A C$**2.179**-billion enterprise value of the Canadian business for investments by investors from the following countries with which Canada has a free trade agreement: United States, United Kingdom, European Union member countries, Australia, Brunei, Chile, Colombia, Honduras, Japan, Malaysia, Mexico, New Zealand, Panama, Peru, Singapore, South Korea and Vietnam
- **World Trade Organization (WTO) Investors:** A C$**1.452**-billion enterprise value of the Canadian business for investments by investors from WTO member countries
- **State-Owned Enterprises:** A C$**578**-million asset value of the Canadian business for investments by state-owned enterprises

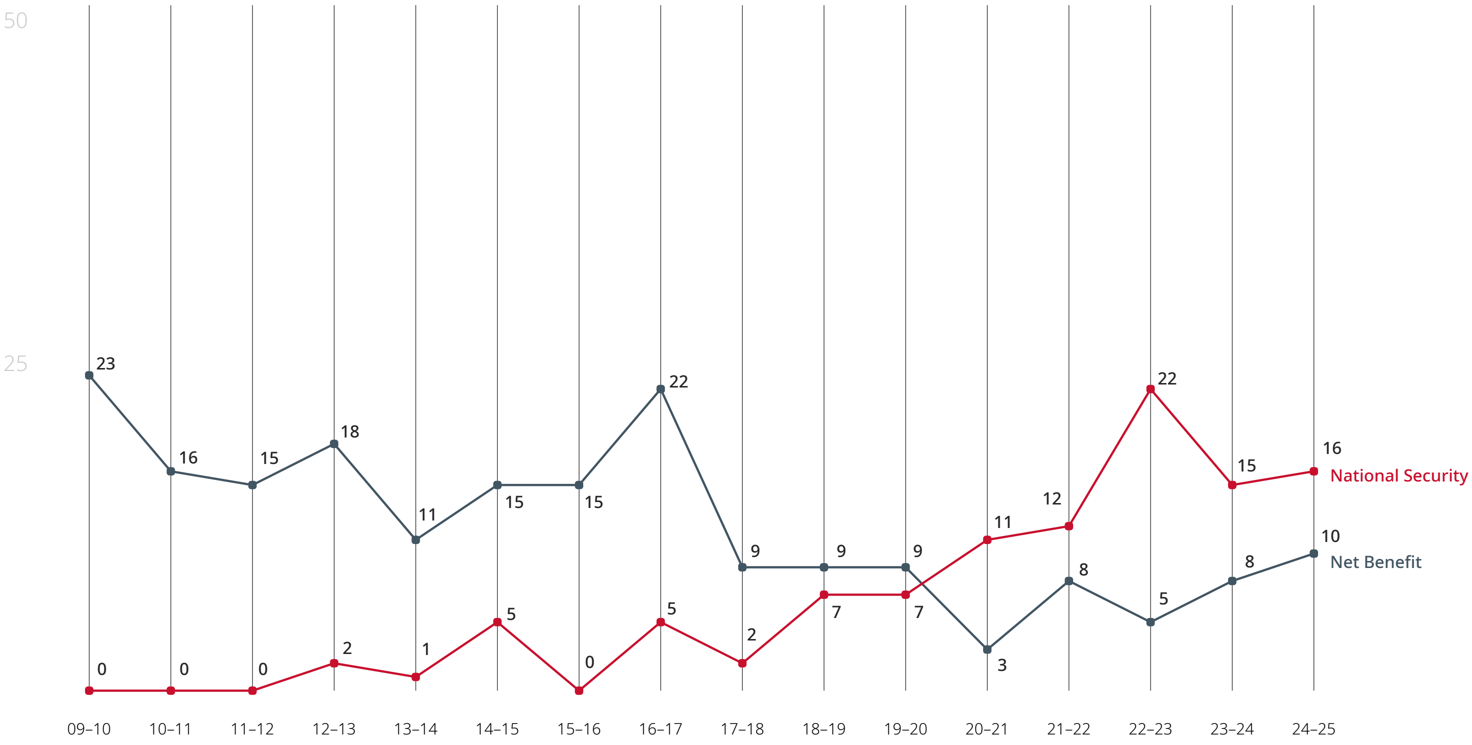
In addition, the ICA includes special rules and significantly lower thresholds of C$5-million or C$50-million in asset value for investments in cultural businesses (for example, video game developers, bookstores or book publishers, and film or movie production companies).

The National Security Regime Includes Safety and Economic Security

For decades, the ICA's core question for large foreign investments was a straightforward economic calculus: would the transaction deliver a "net benefit" to Canada? That "net benefit" framework measured job creation, capital investment, participation by Canadians in management, and the investment's contribution to Canadian industrial efficiency and competitiveness in assessing whether this threshold was met.

Although the net benefit test remains, it has been accompanied by the ICA's national security review provisions, which have been progressively expanded since their introduction in 2009, and especially since the beginning of 2020.

Notably, while the number of net benefit reviews has not exceeded 10 since the 2016–17 fiscal year (when the financial thresholds for net benefit reviews were significantly increased), there have been at least 11 national security reviews in each of the past five years.



From Economics to Security: A Legislative and Policy Evolution

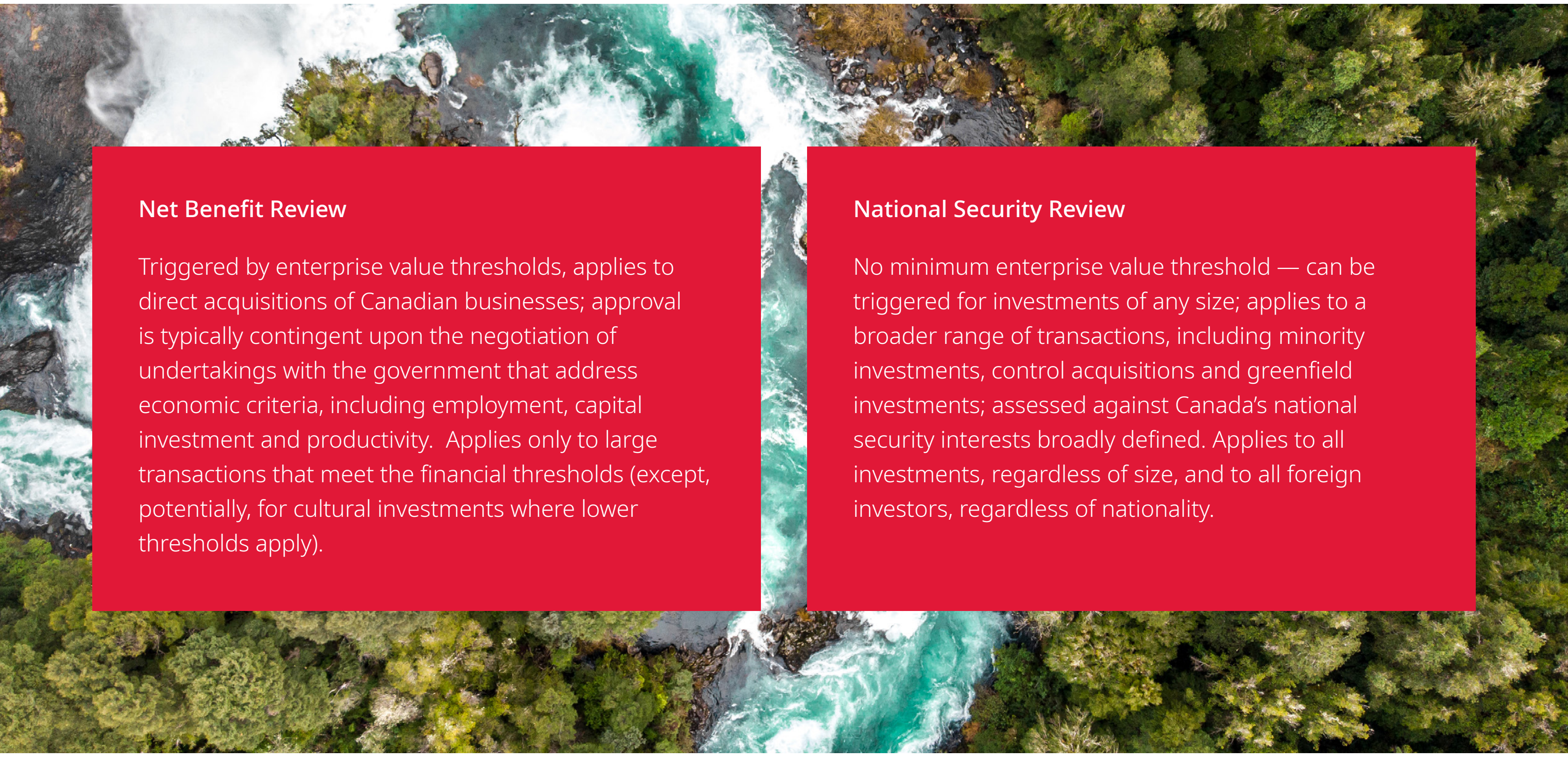
The ICA's national security review framework, introduced in 2009, was initially used sparingly. However, a shift from focusing on the economic implications of foreign investments to the potential for such investments to raise national security concerns has accelerated, especially since 2020, in the wake of the COVID-19 pandemic, which exposed supply chain weaknesses, raised concerns over domestic control of businesses and ushered in a hardening of Canadian investment posture with respect to certain foreign investments, all arising amid increasing geopolitical tensions.

In response, the national security framework under the ICA has been adjusted to reflect current realities, including amendments to clarify the Minister of Industry's authority to impose interim conditions and to accept undertakings as a condition of approval. The introduction of explicit undertaking powers heralds a shift in enforcement practice, opening the door to mitigation as a mechanism to facilitate the completion of investments favourable to Canada on terms that protect Canada's national security interests.

While the introduction of undertakings can allow investments that may have previously been blocked to proceed, the scope of investments subject to a filing requirement — and therefore potentially to a national security review — is also being expanded. Most notably, recent amendments to the ICA (which are not yet in force) introduced the concept of "sensitive sectors" and will impose a pre-closing filing obligation on certain investments in those sensitive sectors, including investments that would not otherwise be subject to a mandatory filing requirement under the ICA (for instance, minority investments).

National Security vs. Net Benefit: A Shifting Balance

In practical terms, the national security review process has become an important lens through which inbound foreign investment is assessed. The net benefit review process, while still important for large direct acquisitions and cultural sector investments, remains relevant.



Net Benefit Review

Triggered by enterprise value thresholds, applies to direct acquisitions of Canadian businesses; approval is typically contingent upon the negotiation of undertakings with the government that address economic criteria, including employment, capital investment and productivity. Applies only to large transactions that meet the financial thresholds (except, potentially, for cultural investments where lower thresholds apply).

National Security Review

No minimum enterprise value threshold — can be triggered for investments of any size; applies to a broader range of transactions, including minority investments, control acquisitions and greenfield investments; assessed against Canada's national security interests broadly defined. Applies to all investments, regardless of size, and to all foreign investors, regardless of nationality.

The most recent ICA annual report reflects this evolution: since the 2020–21 fiscal year — the first year in which the number of national security reviews exceeded the number of net benefit reviews — there were 110 reviews under the ICA (net benefit or national security). Of those 110 reviews, there were more than twice as many national security reviews (76) as there were net benefit reviews (34).

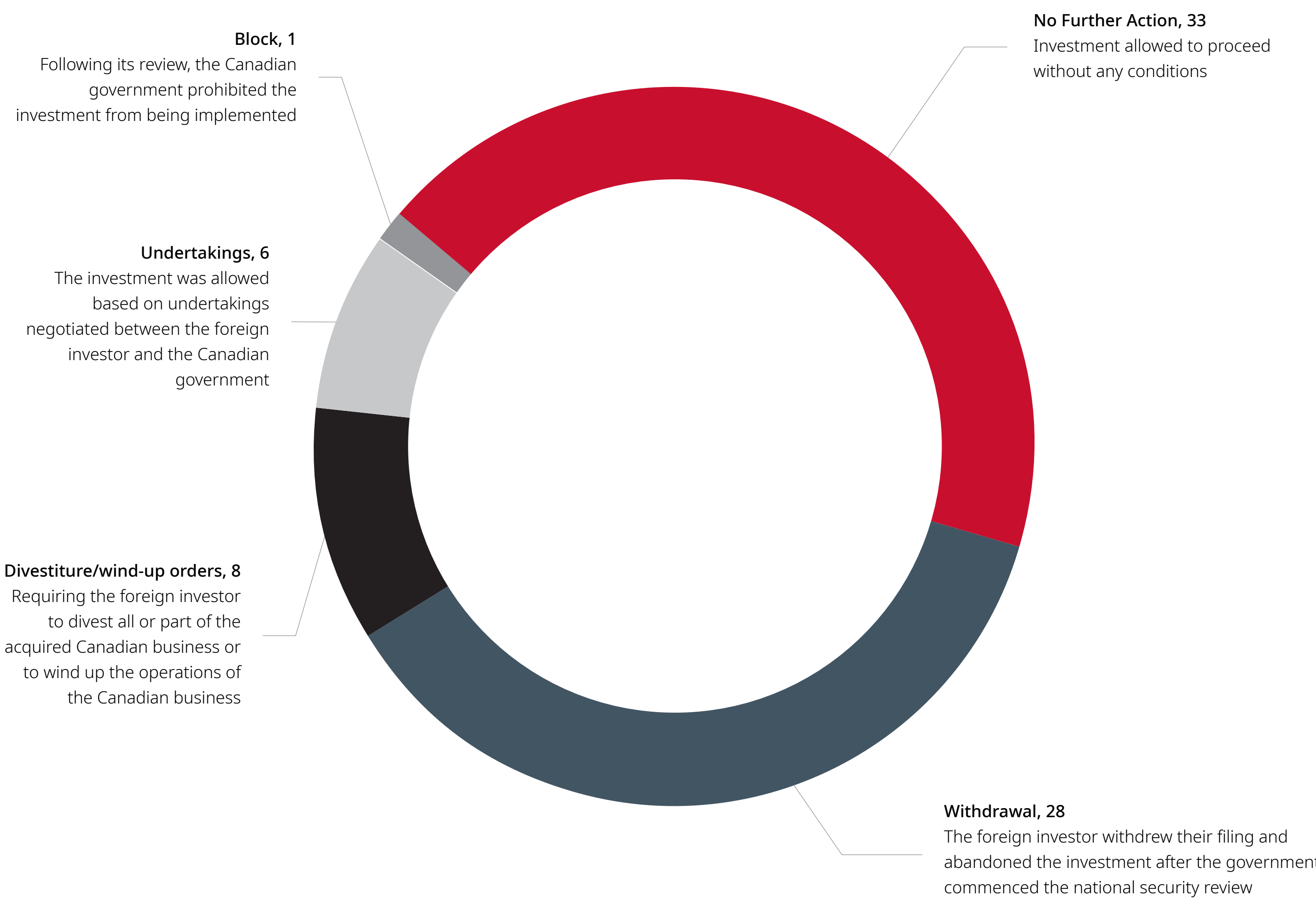
Sectoral Distribution of National Security Reviews

The ICA applies to investments in any industrial sector; however, the ICA annual reports reveal a concentration of national security review activity in a small number of sectors. Since the 2020–2021 fiscal year, the following sectors in particular have been a consistent focus of national security reviews:

- **Critical minerals and mining:** Investments in lithium and other critical minerals have attracted the highest level of national security scrutiny, driven by concerns about foreign control over minerals critical to the energy transition and defence supply chains.
- **Technology and telecommunications:** Investments involving artificial intelligence, advanced semiconductor technology, telecommunications infrastructure and cybersecurity-related businesses have been a consistent focus.
- **Critical infrastructure:** Investments involving energy infrastructure (including pipelines and power generation), financial services infrastructure and transportation networks have been a consistent area of focus.

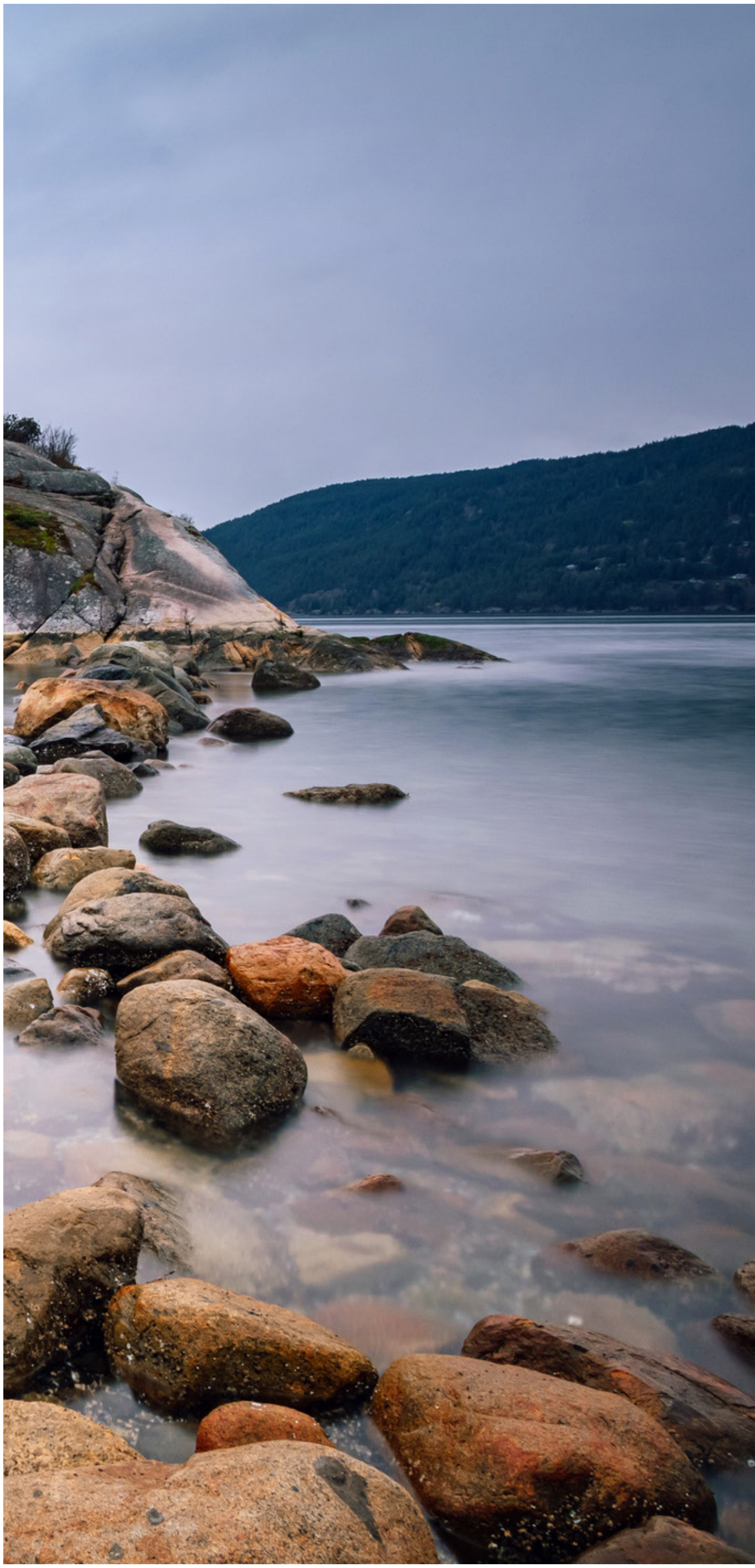
Outcomes of National Security Reviews

Where a national security review is undertaken, the ICA provides for a range of potential outcomes. Of the 76 national security reviews since the beginning of the 2020–21 fiscal year, outcomes have included



The Coming Pre-Closing Filing Regime

One of the most significant structural changes to the ICA regime is the anticipated introduction of a mandatory pre-closing filing requirement for investments in certain sensitive sectors. This reform, foreshadowed in draft legislation introduced in late 2022 and adopted through legislative amendments in early 2024, is expected to come into force in 2026 or early 2027. Once implemented, this new filing regime will fundamentally alter deal timelines and due diligence processes for affected transactions.



Current Framework: Post-Closing Filing

Under the existing regime, many foreign investments are only subject to a notification requirement — meaning a notification of the investment must be filed with the Minister of Industry, but the notification can be submitted after the investment has been completed. Under the current regime, a foreign investment is either reviewable or notifiable:

- **Application for review:** Pre-closing approval and suspensory filing for investments that meet or exceed the relevant financial thresholds requiring net benefit review
- **Notification:** Filing requirement for below-threshold acquisitions of control and the establishment of new Canadian businesses, with notification permitted before implementation or within 30 days after implementation, including on a voluntary basis for certain minority investments

Typically, net benefit reviews account for a minimal proportion of all filings — of the 5,432 filings since the beginning of the 2020–21 fiscal year, only 34 were applications for net benefit reviews (0.7%). This compares to 4,093 notifications to acquire control of a Canadian business (75.3%) and 1,305 notifications to establish a new Canadian business (24%). In practice, most notifications — whether for acquisitions or to establish a new Canadian business — are submitted post-closing.

Year	Total Filings	Net Benefit	Notifications	
			New Business	Acquisitions
2009–10	437	23	109	305
2010–11	596	16	144	436
2011–12	711	15	190	506
2012–13	682	18	177	487
2013–14	666	11	177	478
2014–15	719	15	180	524
2015–16	641	15	128	498
2016–17	737	22	186	529
2017–18	751	9	197	545
2018–19	962	9	255	698
2019–20	1,032	9	255	768
2020–21	826	3	247	576
2021–22	1,255	8	278	969
2022–23	1,010	5	243	762
2023–24	1,203	8	297	898
2024–25	1,138	10	240	888

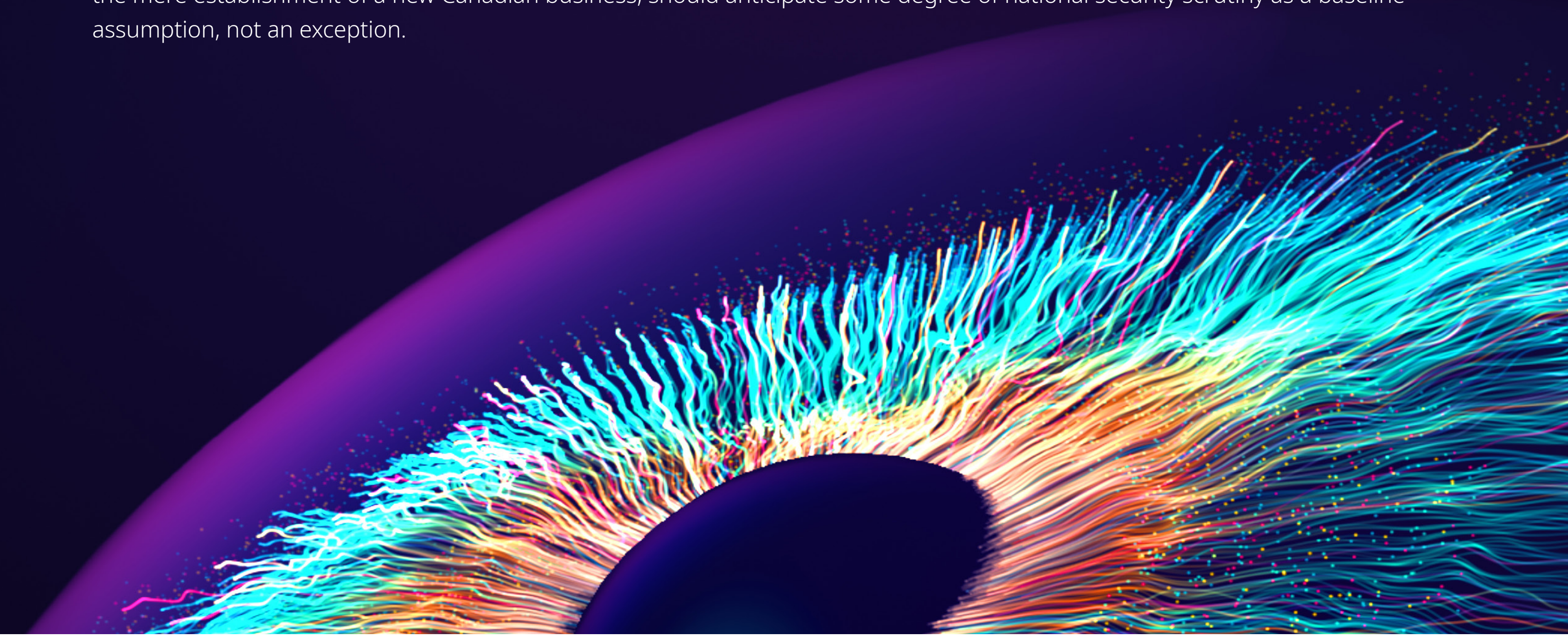
Notably, the 45-day period during which the government can commence a national security review is triggered by the date a complete filing (an application for review or notification) has been submitted. Where a notification is submitted post-closing, the foreign investor risks that its completed investment may subsequently be subject to a divestiture order or other conditions imposed by the government. Meanwhile, from a national security perspective, there is a risk that a problematic investment may be completed before a notification is even submitted, limiting the effectiveness of any measures the government may impose to address national security concerns (although the government can commence a national security review prior to notification, it would first need to become aware of the investment). The new pre-closing filing regime is intended to address this potential risk, at least as it relates to certain investments in the sensitive sectors to which it will apply.

The New Regime: Pre-Closing Mandatory Filing

The new filing regime will require a mandatory, pre-closing filing with a mandatory waiting period for certain investments in prescribed sensitive sectors, regardless of transaction value. Key features of the new filing regime include:

- **Sensitive sectors:** The regime will apply to investments in a defined list of sensitive sectors. The list of "sensitive sectors" has not yet been released, but is expected to largely mirror the sectors outlined in the existing *Guidelines on the National Security Review of Investments*, including:
    - Critical minerals and the critical mineral supply chain
    - Critical infrastructure (energy, telecommunications, transportation, water and financial systems)
    - Critical technologies, including artificial intelligence, quantum computing, advanced semiconductors and biotechnology
    - Personal data of Canadians, including health data and financial data
    - Defence and national security supply chains
- **Universal application:** The pre-closing obligation will apply to all foreign investors — not just state-owned enterprises or investors from non-allied countries, and not just control investments, but also minority investments that meet certain criteria.
- **Mandatory waiting period:** Investors will be prohibited from completing a transaction subject to a mandatory pre-closing filing until the statutory waiting period has expired. Notably, the new filing regime does not currently provide for risk-based screening to facilitate expedited review timelines (e.g., early termination of the waiting period) for lower-risk investors.
- **Review timeline:** The initial review period is expected to be 45 days, with the possibility of extension at the government's discretion in complex cases or where additional information is required, utilizing the existing rules applicable to national security reviews.
- **Penalties:** Closing without complying with the pre-closing filing requirement would expose investors to significant financial or other penalties, including potential divestiture orders.
- **Timing considerations:** Notably, transactions not completed before this new filing regime comes into force and not already notified under the ICA will be subject to the new filing obligations.

This new pre-closing filing regime will apply even to minority investments where certain criteria are met (for example, where the investor could access or direct the use of material non-public technical information and have the power to appoint or nominate board members or senior management). As such, foreign investors investing in Canadian businesses in these sectors, including the mere establishment of a new Canadian business, should anticipate some degree of national security scrutiny as a baseline assumption, not an exception.



Practical Implications of the New Pre-Closing Filing Regime

The introduction of a pre-closing filing regime under the ICA will have important implications for deal planning and strategy, including with respect to deal structuring, timing, and alignment with other Canadian and foreign regulatory regimes:

- **Deal structuring and timing:** Foreign investors must account for the pre-closing filing requirement and applicable waiting periods in deal planning and structuring. Merger agreements should also include appropriate ICA-related closing conditions, termination rights and outside dates that account for this new regulatory step. For example, for transactions in sensitive sectors, a pre-closing review window of at least 45–90 days should be anticipated.
- **Alignment across regulatory regimes:** Foreign investors in Canada already face waiting periods for transactions subject to pre-merger notification under the *Competition Act*. The new ICA pre-closing requirement will add a parallel track, and timelines should be appropriately coordinated. In some transactions, the Competition Bureau review may be a longer process; in others, the potential for net benefit and/or national security review under the ICA will dictate closing timelines.
- **Alignment across jurisdictions:** This new pre-closing filing regime will also need to account for, and where appropriate align with, analogous regimes in allied jurisdictions, including the mandatory declaration and notice regime administered by the United States Committee on Foreign Investment in the United States (CFIUS) and the United Kingdom's *National Security and Investment Act 2021*.

Mitigation — The Art of the Undertaking

As Canada's national security review regime has matured, mitigation by way of formal undertakings to address identified national security concerns has quickly become a central feature. First introduced in September 2024, undertakings were used to resolve national security concerns in six of the 16 national security reviews in 2024–25 (37.5%). Indeed, given that the rules expressly permitting undertakings only came into effect halfway through the fiscal year, their important role in facilitating investments is understated. Regardless, the early data on the role of undertakings makes it clear that a well-crafted mitigation strategy can mean the difference between a transaction proceeding and an unfavourable outcome (either the investor abandoning the investment in the face of opposition, or a formal divestiture order). Accordingly, understanding how mitigation works in practice is essential for foreign investors.

What Is Mitigation?

Mitigation refers to the process by which a foreign investor negotiates commitments to address national security concerns identified by the government. These binding commitments are formalized in written undertakings provided by the investor to the Canadian government. Notably, national security undertakings are distinct from undertakings under the net benefit review process — a transaction subject to a net benefit review that also raises national security concerns may require two distinct sets of undertakings as a condition of approval.

Common Mitigation Measures

The specific content of national security undertakings is heavily dependent on the nature and severity of the identified concerns, the nature of the Canadian business, the industry sector involved and the investor's profile. Examples of undertakings that may be required to address national security concerns include:

- **Structural changes:** Carving out or ring-fencing sensitive business lines, or amending the corporate structure to alter reporting lines and limit the foreign investor's access to sensitive information.
- **Governance and personnel matters:** Restrictions regarding leadership of the Canadian business, which may include limits on the investor's ability to appoint board members or senior officers, or requirements for the investor to appoint Canadians to the board and specific board committees, to appoint a Canadian security officer, or to require that certain roles only be held by Canadian citizens.
- **Access and data controls:** Physical or electronic systems or procedures to restrict the investor's access to sensitive data, facilities or systems, and other requirements limiting the flow of information between the Canadian business and the investor. Investors may also be required to store personal data of Canadians, or data relating to critical infrastructure, exclusively in Canada and refrain from transferring it to foreign jurisdictions.
- **Supply chain controls:** Restrictions on the sourcing of goods or services from foreign jurisdictions and requirements to continue supplying critical goods or services to the government or other parties.
- **Reporting and monitoring:** Requirements to monitor and regularly report on compliance with the undertakings. Investors may also be required to accept the appointment of a government-approved compliance monitor at the investor's expense.

Mitigation Negotiation: Process and Strategy

Successfully mitigating national security concerns requires early and proactive engagement. Investors who wait before proposing mitigation measures are at a significant disadvantage compared to those who engage with the government early in the process. Best practices in mitigation strategy include:

- **Early engagement:** Proactively meeting with, or making written submissions to, the government early in the process to outline the transaction and to identify potential national security concerns before a formal filing is made.
- **Investor profiling:** Clear and early articulation of the investor's governance structure, ownership, ultimate beneficial ownership and relationship (if any) with foreign government actors can help identify potential pressure points and inform mitigation measures.
- **Proportionality:** Proposing mitigation measures calibrated to the identified risk(s), rather than volunteering excessive restrictions that may be difficult to comply with or for the government to effectively assess.
- **Operational feasibility:** Ensuring that mitigation measures can be effectively implemented in practice, with clear compliance mechanisms and reasonable timelines.

The Role of Compliance Monitors

Although it is early days for the use of these new formal undertaking powers, one likely trend in ICA enforcement is an increase in the use of independent compliance monitors — third-party professionals appointed by the government but paid for by the investor — to oversee adherence to undertakings. Monitors are a standard feature of consent agreements under the *Competition Act* and other regulatory regimes, and investors should anticipate compliance monitoring as a likely condition in any national security undertaking package and account for the costs in their assessment of deal economics.

Canada's Evolving Stance on Investment From China and Elsewhere

China: From Extreme Caution to Case-by-Case Assessment

One of the more nuanced and politically sensitive developments in Canadian foreign investment policy has been an apparent recalibration of Canada's stance toward investment from China. In January 2026, during Prime Minister Mark Carney's visit to Beijing, Canada and China released the Canada-China Economic and Trade Cooperation Roadmap (Roadmap). The Roadmap outlines a renewed willingness to facilitate two way investment flows between the countries, with Canada explicitly welcoming Chinese investment in energy, agriculture, consumer products and other sectors. The Roadmap further commits both countries to increasing transparency in foreign investment processes, marking a structural step toward stabilizing the investment environment.

This renewed openness to Chinese investment signals a reset in relations after years of restrictions, including a 2012 policy statement issued by the Canadian government contemporaneous with the approval of the acquisition of CNOOC's acquisition of Nexen and PETRONAS' acquisition of Progress Energy/two significant Canadian oil and gas companies by SOEs. In that policy statement, the Canadian government indicated that the acquisition of a Canadian oil sands business would be found to be of net benefit to Canada on an exceptional basis only. Then, in 2022, just days before the government ordered three Chinese companies to divest their interests in Canadian lithium and critical minerals companies, the Canadian government issued a policy statement indicating that investments in Canada's critical minerals sector by state-owned enterprises (SOEs) or private investors from countries with "non-like-minded governments" would similarly "only be approved on an exceptional basis." Most recently, in 2024, the government issued a third policy statement noting that the acquisition of "important Canadian mining companies engaged in significant critical minerals operations" would be of net benefit "in the most exceptional of circumstances."

The Roadmap and subsequent statements by the Canadian government indicate a shift away from the strict approach outlined in the government's previous policy statements and towards greater openness to foreign investment from China. The precise delineation of this shift remains to be seen. For example, will there be a differentiated approach to investments by Chinese SOEs as compared to genuinely private Chinese companies? Will there be greater openness to investments by Chinese entities in certain sectors, but not in others? Regardless, most national security reviews since 2009 (65 of 105; 61.9%) have related to investments from China. Chinese investors should not assume that their investment will be categorically rejected. Early engagement with Canadian counsel and, where appropriate, with government officials is essential to understanding how a specific transaction will be assessed. Industry sector, investor profile and investment structure all matter significantly.

Middle Eastern Investment: A Growing Welcome

In contrast to the historical caution towards Chinese investments, Canada has typically been more welcoming of investments from the Middle East — particularly from Gulf Cooperation Council (GCC) countries, including the United Arab Emirates (UAE), Saudi Arabia, Kuwait and Qatar. Amid ongoing trade tensions, however, Canada has also been seeking to broaden its trade and investment relationships with other countries, including in the Middle East.

In November 2025, the Canadian government finalized a Foreign Investment Promotion and Protection Agreement (FIPA) with the UAE, designed to enhance predictability for bilateral investors. In one of the largest potential capital inflows from a Middle Eastern country into Canada, the UAE also announced a commitment to invest up to C$70-billion in strategic Canadian sectors, including energy, artificial intelligence, logistics, mining and other national priority industries.

In January 2026, the Canadian government announced an agreement with Qatar to conclude negotiations on a FIPA by summer 2026, enabling Canadian businesses to more easily expand their operations in and to attract investment from Qatar. At the same time, the Qatari government also announced a commitment to make strategic investments in Canadian nation-building projects.

India: Renewed Engagement

The thawing of trade and investment relationships with China and the broadening of such relationships with Middle Eastern countries are key parts of Canada's efforts to diversify trade relationships. Canada has also been working to expand economic ties with India through initiatives such as the trilateral technology and innovation partnership with Australia and India announced in November 2025 to strengthen cooperation in critical and emerging technologies, and announcing negotiations towards a new Comprehensive Economic Partnership Agreement with India before the end of 2026, underscoring the intent to diversify beyond its traditional investment partners.

These recent efforts to expand trading relationships are part of a broader push by the Canadian government to signal that Canada is open for business in response to heightened trade and geopolitical tensions and present new opportunities for foreign investors. While these are welcome signals for foreign investors, they should not assume that these shifts will signal an entirely frictionless review. Investments in sensitive sectors, including critical minerals and critical technology, among others, will still attract national security scrutiny regardless of investor nationality. And, perhaps most notably from a foreign investment perspective, the political environment can shift in response to evolving political and economic dynamics.

Conclusion and Recommendations

Foreign investment in Canada in 2026 requires navigating a regulatory environment that is more rigorous and more sophisticated than at any prior point. The shift toward the primacy of national security considerations, combined with the imminent introduction of a mandatory pre-closing filing regime and active enforcement in a rapidly evolving geopolitical environment, demands early planning, expert guidance and proactive engagement with the regulatory process.

For foreign investors considering Canadian transactions, the following key recommendations emerge from the themes discussed above:

- Conduct a national security assessment at the earliest stage of transaction planning — before signing — to identify potential issues and, where appropriate, develop a mitigation strategy.
- For investments in sectors subject to the new pre-closing filing regime, incorporate sufficient review periods (at least 45–90 days) into deal timelines and merger agreement terms.
- Engage experienced legal and government relations advisors to facilitate proactive engagement with the government throughout the review process.
- Where applicable, develop mitigation proposals that are monitorable, operationally feasible and proportionate to the risks identified and accompanied by a robust compliance framework.

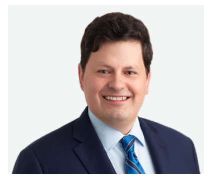
Canada remains open for business and an attractive destination for foreign capital. However, the transformation of the ICA into a national security-first regime means that regulatory preparedness is now as important as financial and commercial due diligence. Accordingly, successful navigation of the ICA process is key to successfully achieving the desired outcome.

Key Contacts

Navin Joneja
Group Co-Chair, Partner
navin.joneja@blakes.com
+1-416-863-2352

Kevin MacDonald
Partner
kevin.macdonald@blakes.com
+1-416-863-4023

Julie Soloway
Group Co-Chair, Partner
julie.soloway@blakes.com
+1-416-863-3327



Fraser Malcolm
Partner
fraser.malcolm@blakes.com
+1-416-863-4233

Jonathan Bitran
Partner
jonathan.bitran@blakes.com
+1-416-863-3289

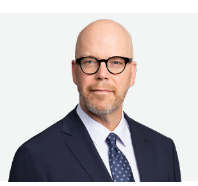
Elder Marques
Partner
elder.marques@blakes.com
+1-416-863-3850 (Toronto)
+1-613-788-2238 (Ottawa)

Cassandra Brown
Partner
cassandra.brown@blakes.com
+1-416-863-2295

Joe McGrade
Partner
joe.mcgrade@blakes.com
+1-416-863-4182

Brian A. Facey
Chair, Strategic Business Initiatives
brian.facey@blakes.com
+1-416-863-4262

Julia Potter
Partner
julia.potter@blakes.com
+1-416-863-4349



Randall Hofley
Partner
randall.hofley@blakes.com
+1-416-863-2387 (Toronto)
+ 1-613-788-2211 (Ottawa)

Micah Wood
Partner
micah.wood@blakes.com
+1-416-863-4164

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