

Investment Canada Act

Foreign direct investment can convey great advantages by bringing knowledge, technology, efficiencies and economies of scale, all of which are critical to competitiveness. As an enduring policy, Canada should embrace foreign direct investment and reduce barriers to it.

In our view, the *Investment Canada Act* (Section 20) provides a fairly detailed process, including six economic factors that are considered by the Minister in determining whether a transaction is of “net benefit” to Canada. These are: 1) effect of the investment on the level of and nature of economic activity in Canada; 2) the degree and significance of participation by Canadians in the business; 3) effect of the investment on productivity, product innovation and product variety in Canada; 4) effect of the investment on competition within an industry in Canada; 5) the compatibility of the investment with national, industrial, economic, and cultural policies taking into consideration the stated policies of the provinces that are affected by the acquisition proposal; and 6) contribution of the investment to Canada’s ability to compete in the world.

While the six factors provide guidance for the Canadian government, the government does not clearly explain to the purchaser(s) why a negative ruling has been made, thus creating uncertainty for investors and others in the very expensive acquisition process.

The public is entitled to jurisprudence. Additionally, investors are entitled to know, in advance, if they are buying a company which they will not be free to sell somewhere down the road. Similarly, disclosing the benefits of an approved transaction, while preserving confidential commercial information, should be encouraged. Such disclosure does not require an amendment of the *Act*.

The main preoccupation must be to minimize the uncertainties around the review process. An efficient, predictable and transparent process benefits everyone. Canada needs to signal that it still welcomes foreign investment to keep attracting needed capital and to allow Canadian companies to be welcomed elsewhere in the world. Unclear interpretations of terms like “net benefit” and “strategic asset” create investment uncertainty and barriers to entry for foreign investment.

In early 2011, the House of Commons Standing Committee on Industry, Science and Technology launched consultations on the *Investment Canada Act* and the Canadian Chamber looks forward to its report. The Canadian Chamber is also encouraged by the comments made by the Prime Minister that the Industry Minister is working on providing greater clarity and hopes to provide more information about the “parameters” of the government’s decision-making process on foreign reviews.

Recommendation

That the federal government minimize uncertainties around the foreign investment review process by making it more transparent and predictable and by providing greater clarity on the interpretations of terms like “net benefit” and “strategic asset” in legislation and interpretative bulletins.