NOVEMBER 10, 2023 • 4 MIN READ

Investing in Canada’s uranium mining industry

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Canada is the world’s second largest producer of uranium and has one of the largest uranium reserves in the world. Most Canadian uranium is mined in the Athabasca Basin in northern Saskatchewan. There are also exploration uranium projects in Labrador, Nova Scotia, Nunavut, Ontario and Québec.

Set out below are the primary regulatory approval requirements (and applicable foreign ownership policies) relating to non-Canadian investments in Canada’s uranium mining industry.

Investment Canada Act (re: foreign direct investment)

Investments in Canadian uranium businesses by non-Canadians are primarily governed by the *Investment Canada Act* (ICA), which regulates all foreign investment in Canada. Under the ICA, two types of review are possible:

- **Net benefit review.** Investors may have to obtain economic “net benefit” approval if they propose to acquire a Canadian entity that satisfies certain asset or enterprise value thresholds. Investments subject to net benefit reviews also undergo national security scrutiny. Reviews regularly take 75 to 90 days. Most transactions are cleared, provided that investors undertake to maintain the Canadian presence of the Canadian business (in respect of employment, capex and other metrics) and comply with other applicable policies.

- **National security review.** All acquisitions of control of Canadian businesses are currently subject to post-closing reporting requirements that could trigger a national security review. As the government has residual jurisdiction to review virtually any transaction, voluntary filings for non-reportable transactions are also possible. Recently proposed amendments to the ICA would require mandatory pre-closing filings for both control and minority investment transactions in certain sensitive sectors, which will likely include uranium. The government has 45 days after an investor makes a filing to initiate a national security review. Most investments are cleared during the initial screening process. Full reviews can take 200 days or longer.

Under the ICA, compliance with Canada’s Non-Resident Ownership Policy in the Uranium Mining Sector (the NROP) will be required. The NROP restricts non-Canadians from acquiring more than a 49% ownership interest in a uranium-producing mining property located in Canada, subject to some exceptions. Higher levels of ownership are permitted if (i) the uranium business is controlled in fact by Canadians, or (ii) no Canadians are interested in owning the remaining interests. The NROP applies only to uranium mining properties that are in production, not to exploration projects.

Since 1987, when the NROP was issued, there have been three applications from foreign companies seeking exemptions. The government of Canada granted all three exemptions. Two of the exemptions were provided to Orano, a French mining company, in the early 90s, to develop the McClean Lake and Midwest Lake projects with 77.5% and 74.8% foreign ownership, respectively. The most recent exemption was granted in 2015 to Paladin Energy, an Australian company, to develop a uranium mine at the Michelin Project in Labrador, for a 100% ownership interest.

Under certain trade agreements (e.g., the Canada and European Union Comprehensive Economic and Trade Agreement and the Canada-United Kingdom Trade Continuity Agreement), investors from specific countries may be exempt from the NROP requirement to seek a Canadian partner. In other words, they can seek an exemption from the policy without first having to try to partner with Canadian co-investors.

Competition Act (re: merger control)

Pre-merger notification and either approval or the expiry of a statutory waiting period under Canada's *Competition Act* are generally required for the proposed acquisition of a uranium business where certain financial and percentage ownership thresholds are exceeded. In practice, mining transactions rarely give rise to substantive competition concerns. Assuming an investor has no overlapping interests in uranium projects, a review would likely be completed within two to six weeks.

To discuss these issues, please contact the author(s).