

New Critical Path for Critical Minerals Deals: Canada to Implement Pre-Closing National Security Review Regime

Chris Hersh, Joshua Hollenberg

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Transactions in the critical minerals space will soon need to navigate a new suspensory, pre-closing notification regime that is expected to come into effect in early 2027. The new regime will apply to all investments by non-Canadians into Canadian entities operating in prescribed sectors where the investor gains certain rights as part of its investment. The expected effect of this new regime is that the notifications will result in pre-closing national security reviews for more transactions, including a considerable number of critical minerals investments.

National Security Reviews

The Investment Canada Act's (ICA) national security review regime allows the federal government to review any investment by a non-Canadian which it believes may be injurious to Canada's national security. Where the government makes this determination, it can take remedial action ranging from imposing conditions to blocking or unwinding the investment. National security reviews are typically triggered by the filing of an ICA notification (or an application for review) for the acquisition of control of a Canadian business.

A national security review is more likely where (i) the investor has ties to a regime that is not aligned with Canadian economic or security interests; and/or (ii) the Canadian entity operates in a sensitive industry. The government's Guidelines on the National Security Review of Investments identify critical minerals production and critical minerals supply chains as areas of potential concern.

ICA notifications can currently be submitted up to 30 days post-closing. Only where a pre-closing application for review is made (requiring certain financial thresholds to be exceeded), or a notification is submitted before closing, can a pre-closing national security review be triggered. The new notification regime will not only expand the range of notifiable transactions to include minority investments and asset transactions, it will require the new notifications – and any national security reviews – to be done pre-closing.

New Notification Regime

The new notification regime will apply to a broad range of investments in prescribed sectors (including

critical minerals production and supply chains) where the investor gains certain specified rights.

The scope of the prescribed sectors, and the triggering investor rights, will be set out in regulations, which are expected to be published for consultation in Fall 2026 and to come into force (along with the relevant amendments) in early 2027.

As a result, a broad range of foreign investments into Canadian entities engaged in the critical minerals sector (possibly including critical mineral operations located outside of Canada) will be subject to the new pre-closing notification regime.

The minimum penalty for failing to make a mandatory filing will be \$500,000, with the maximum penalty to be set out in the pending regulations.

Key Takeaways

Foreign investors considering investments in critical minerals companies will need to consider whether there is a nexus with Canada and, if so, whether their investment will be subject to the new mandatory notification regime.

At the outset, it may be unclear whether certain investments are caught by the new regime, potentially requiring consultation with the regulator. Critical minerals investors will want to ensure they properly assess whether the regime applies, given the significant penalties for failing to notify and the commercial risk associated with a post-closing national security review.

Where the new regime applies to an investment, parties will also need to consider the timing implications, as a full national security review can take up to 200 days (and possibly longer).

If you have questions regarding the government's approach to reviewing investments in the critical minerals sector or how the pending pre-closing notification regime applies to your investment, please contact any member of the [Cassels Competition & Foreign Investment Law Group](#).