



Ensure Your Canadian Business is Compliant with the *Investment Canada Act*

The *Investment Canada Act* (the “ICA”) is federal legislation that applies to, among other things, an investment to establish a “new Canadian business.” Except for investments in Canada to establish certain cultural businesses or those raising national security concerns, all other investments to establish new Canadian businesses are subject to a notification process only under the ICA. The Director of Investments (an officer appointed under the ICA) must be notified within thirty days of the implementation of the investment (the “ICA Notification”).

A “Canadian business” is defined in the ICA as “a business carried on in Canada” that must include “a place of business in Canada, an individual or individuals in Canada who are employed in connection with the business and assets in Canada used in carrying on the business.” Thus, any non-Canadian investor wishing to establish a new Canadian business (i.e., a business that is not already being carried on in Canada which is unrelated to any other business currently being carried on in Canada by the non-Canadian investor) must complete an ICA Notification.

The ICA Notification must include information relating to:

- the nature of the investment;
- a description of the Canadian business being established;
- details relating to the investor’s officers, directors and shareholders;
- the investor’s sources of financing for the proposed investment;
- whether the investor is owned, controlled or influenced, directly or indirectly, by a foreign government; and
- information to permit enterprise value information to be collected.

The ICA Notification is filed with the Director of Investments who issues a receipt upon certification of a completed notification filing. The receipt confirms that the establishment of the new Canadian business is not reviewable under Part IV of the ICA.

Investors should also be aware of the provision in the ICA which may subject an investment that establishes a new Canadian business to review under national security grounds. This may occur if the Minister deems the investment potentially injurious to national security and if the Canadian federal Cabinet (on the Minister’s recommendation) makes an order for review. For an investment involving an establishment of a new Canadian business, an investor may elect to obtain assurance with respect to potential national security issues by submitting the ICA Notification prior to taking steps to implement the investment.

Aird & Berlis LLP has extensive expertise in the ICA and regularly advises clients on their expansions into Canada. Our lawyers are on standby to assist you in ensuring compliance with this important legislation.

Contacts



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Stephen is a member of the firm's Corporate/Commercial, Telecommunications, Sports & Media and Technology Groups. Stephen has expertise in regulatory, public law, competition law and copyright law. Trained as a regulatory economist and as a lawyer, Stephen's expertise extends to advising clients on merger clearance under the *Competition Act* as well as foreign investment in Canada under the *Investment Canada Act*. He assists clients in a number of sectors, including the Canadian trade and investment regime, marketing and advertising matters and compliance under the Health Canada regulatory framework.

He has been consistently recognized as a leading practitioner of communications and media law by Chambers and Partners, Lexpert, Best Lawyers and Legal Media Group. Stephen was the Telecommunications Contributor to Legal Alert (*Carswell*) for over 20 years.

Before becoming a lawyer, Stephen worked as an economist and policy advisor for the Canadian government in the area of competition policy, regulatory reform and telecommunications.



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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.