Proprietary

Canadian barriers to Chinese investment likely to expand, remain indefinitely - advisors say

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- Significant investments from Chinese firms expected to be reviewed for national security risks
- Future sectors for protection likely to become public with release of amended regulations

Canada's barriers to Chinese investment, which have increased in recent years due to tensions between the Canadian and Chinese governments, will likely expand to other sectors and remain in place indefinitely, three advisors agreed.

They also agreed that these investment barriers have increased uncertainty in Canada's mining sector and reduced the capital available to Canadian mining firms, especially the junior ones.

All significant investments into Canada from Chinese firms are going to be reviewed for national security risks and any Chinese-owned company will be considered a state-owned enterprise, said Anthony Baldanza, a foreign investment and competition lawyer at Fasken.

Having already signaled that it will not allow Chinese investment into Canada's critical minerals companies (including ones with mines outside of Canada) or into companies with access to sensitive technology or sensitive personal data, the federal government is likely to expand its protectionism by adding other sectors and types of companies to the current list, he said. Companies involved with AI or high technology with military applications are likely to be included in future Chinese investment bans, he said.

Julian Ovens, a Crestview Strategy political advisor with executive experience at Canadian natural resources firms, said that the Canadian government is also showing increasing concern about Chinese involvement in the critical infrastructure, personal protective equipment and pharma sectors. Also likely to be blocked are Chinese purchases of land or buildings physically close to critical infrastructure.

Some of the future sectors for protection, Baldanza said, are likely to become public with the release of regulations related to *Bill C-34: An Act to amend the Investment Canada Act*, which passed third reading in Parliament in November and has moved to the Senate.

The amount of Chinese investment in Canada has decreased in recent years, Baldanza said.

The number of national security reviews by the Canadian government regarding proposed Chinese investments have increased in recent years, said Jim Dinning, a foreign investment and competition lawyer at Davies Ward Phillips & Vineberg.

In 2022, François-Philippe Champagne, Minister of Innovation, Science and Industry, and Jonathan Wilkinson, Minister of Natural Resources, stated that significant transactions by foreign state-owned enterprises in Canada's critical minerals sectors will only be approved on an exceptional basis. As well, they stated that participation by a foreign state-owned company in such a deal could be grounds to determine that the investment could harm Canada’s national security, regardless of the value of the transaction.

Chinese investment in Canada has historically been concentrated in the mining space, Dinning said, and the government's "aggressive" decision in 2022 to force Chinese companies to sell stakes in three Canadian lithium miners -- Vancouver-based

Power Metals, Calgary-based Lithium Chile and Vancouver-based Ultra Lithium -- has contributed to an increasing sense in China's business community that Canada is no longer a friendly place to invest.

Chinese state access to the personal information of American citizens through apps such as Los Angeles- and Singapore-based TikTok has become a political issue in the US, Dinning said, and that will likely happen soon in Canada too.

Bill C-34 will likely become law in 2024, Dinning said.

No Canadian political party, if elected, is likely to end or reduce Canadian barriers to Chinese investment, Ovens said.

Canada's crackdown on Chinese investment in critical minerals will not slow the global energy transition or make it more difficult for the world to meet its climate goals, Ovens said, because the Chinese government is taking similar protectionist steps and has used its control of critical minerals as political leverage, making North American-controlled supply chains a necessity for Canada and the US.

Not all new Chinese investment into Canada will be blocked, Baldanza said. New investments with no national security implications may proceed, he said.

In March, Wilkinson told a media outlet that Canada will not force Chinese state-owned enterprises to sell their stakes in three of Canada's largest mining companies, Vancouver-based Teck Resources, Vancouver-based Ivanhoe Mines and Vancouver-based First Quantum Minerals.

by Mark Coakley in Toronto

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