



Innovation, Science and
Economic Development Canada

Innovation, Sciences et
Développement économique Canada

Investment Canada Act

ANNUAL REPORT 2018-19



Canada

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Message from the Director of Investments to the Minister of Innovation, Science and Economic Development

Dear Minister:

I am pleased to present to you the Annual Report on the administration of the *Investment Canada Act* (ICA or the Act) for fiscal year 2018–19.

The Act continues to play an important role in encouraging investments from global companies that will contribute to innovation, growth, and job creation in Canada. Over fiscal year 2018-19, foreign direct investment (FDI) inflows and cross-border mergers and acquisitions activity in Canada increased, in contrast with decreases in FDI worldwide.

The increased investment flows to Canada translated into an all-time high number of filings under the ICA in 2018-19. Sustained outreach and transparency efforts to inform Canadian businesses, investors, their advisors and other levels of Government of the ICA review process and obligations contributed to the higher number of filings as well.

These outreach initiatives have also led to a notable change and maturity in practice among external advisors to better account for the national security review process under the Act in planning investments in Canada. Indeed, this was one of the policy objectives underlying the Guidelines on the National Security Review of Investments published in 2016 and 2017 amendments to the ICA to require annual public reporting on the administration of the national security review provisions. We are encouraged to see the results of these efforts.

In addition to the continuing evolution of practice under the ICA, fiscal year 2018-19 saw increased international policy attention on national security concerns associated with foreign investment. Canada has had a legal framework with broad national security review authorities in place since 2009, and has steadily increased its application over the ensuing years as our FDI profile has diversified; in recent years, our comparator jurisdictions have recognized the need for a regime, and many are considering introducing new legislation, or expanding existing authorities. At the same time, the policy discourse has emphasized a foundational commitment to maintaining an open investment climate for positive foreign investment.

In this regard, in fiscal year 2018-19 there were nine applications for net benefit review all of which were approved. These reviews helped to ensure that the most significant investments to the Canadian economy will promote employment opportunities for Canadians, innovation and competition in Canada. These nine investments, as well as all other investments whether or not filings were required, were subject to national security review. Of these, seven investments required an order by the Governor-in-Council under section 25.3 for extended review under the national security provisions of the Act. The characteristics of these investments and the outcomes of the reviews are provided in this Report.

Over the coming year, I look forward to continuing to support the administration of the Act in a manner that encourages investment, economic growth and employment opportunities in Canada while protecting Canada's national security.

Yours sincerely,

David McGovern, Director of Investments



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Introduction

The Act is the Government's primary mechanism for reviewing foreign investment in Canada. Applied to a broad range of investments across all sectors, it has two primary purposes: to review significant acquisitions of control to ensure they are likely to be of net economic benefit to Canada, and to review investments that could be injurious to national security. Under section 38.1 of the Act, the Director of Investments is required to submit a report to the Minister for each fiscal year on the administration of the Act, which is to be made available to the public. This is the Annual Report for fiscal year 2018-19.

Net Benefit

A net benefit review is required under the Act when a non-Canadian investor seeks to acquire control of an existing Canadian business valued at or above the relevant threshold. The investment cannot be implemented unless the Minister is satisfied that the investment is likely to be of net benefit to Canada. The threshold levels are indexed to annual changes in Canada's gross domestic product, and accordingly, on January 1, 2019, the threshold for review increased from \$1 billion to \$1.045 billion in Enterprise Value for private-sector investors from World Trade Organization (WTO) member countries and from \$1.5 billion to \$1.568 billion for private-sector investors from free trade agreement partners. For state-owned enterprises (SOEs) from WTO member countries, the relevant threshold increased to \$416 million in Asset Value.ⁱ

In making a determination of likely net benefit, the Minister considers the six factors set out in the Act:

1. the investment's effect on the level and nature of economic activity in Canada, including employment, resource processing, and the utilization of parts, components and services;
2. the degree and significance of participation by Canadians in the Canadian business;
3. the investment's effect on productivity, industrial efficiency, technological development, and product innovation and variety;
4. the investment's effect on competition;
5. its compatibility with industrial, economic and cultural policies; and
6. its contribution to Canada's ability to compete in world markets.

In addition to the factors set out in the Act, the Minister has also issued Guidelines about how the Act's provisions are applied in specific circumstances, including specific guidelines on the net benefit assessment of investments by investors that are owned, controlled or influenced by a foreign state.ⁱⁱ For investments by a State Owned Enterprise (SOE), the Minister takes into account the governance and commercial orientation of the investor, and for commitments to transparent and commercial operations.

No net benefit review is required for acquisitions of control of Canadian businesses valued below the relevant thresholds. However, investors are required to submit a notification of the acquisition of control. A notification is also required to be filed whenever an investor from a WTO member country indirectly acquires control of an existing Canadian business, or when a non-Canadian investor makes an investment to establish a new Canadian business.ⁱⁱⁱ



National Security

In 2009, provisions were introduced to the Act to allow for reviews of investments that could injure Canada's national security. These provisions, in Part IV.1 of the Act, give the Governor-in-Council (GiC) the authority to take any measure related to a foreign investment that it considers advisable to protect national security, including:

- directing the investor not to implement the investment;
- authorizing the investment on condition that the investor (i) give written undertakings that the GiC considers necessary in the circumstances, or (ii) implement the investment on the terms and conditions ordered by the GiC; or
- requiring the investor to divest control of the Canadian business or of its investment in an entity.

All investments by non-Canadians into Canada are subject to a multi-step national security review process under these provisions. This includes investments where no application for net benefit review or notification is required, such as the acquisition of less than control of a Canadian entity.



Highlights from Fiscal Year 2018-19

- This past year, the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP) entered into force between Australia, Canada, Japan, Mexico, New Zealand, Singapore and Vietnam. For ICA purposes, this meant that private investors whose country of ultimate control is Australia, Japan, New Zealand, Singapore or Vietnam, as well as Mexico, which was already a trade agreement partner, will now benefit from the trade agreement partner review threshold which in 2018-19 was \$1.568 billion. For more information on CPTPP, consult the Global Affairs Canada website: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/index.aspx?lang=eng>
- In total, 962 investment filings (applications for review and notifications) were certified as complete under the Act. Of this total, 9 were applications for net benefit review — the same number as over the 2017-18 fiscal year — all of which were approved. There were 953 notifications certified, significantly more than the 742 certified in 2017-18. The total value associated with the approved applications for review and certified notifications was \$84.73 billion in Enterprise Value and \$41.24 billion¹ in Asset Value.
- Each of these investments, as well as additional investments not subject to the requirement to notify or apply, were subject to review pursuant to Part IV.1 of the Act. There were nine notices issued under section 25.2 to investors advising them that a further section 25.3 GiC order for review may be issued. Of those nine, seven investments were subsequently subject to such an order for review, ultimately resulting in two Governor in Council final orders requiring the investor to divest itself of its investment, two cases where the investment was withdrawn, and three cases where it was determined that no further action was required under the ICA.

¹ Because there was one application calculated in asset value, to preserve commercial confidentiality and to prevent the risk of identifying the individual investment, the specific amount of the assets has not been included in the total for this amount throughout this report.



Activities under the *Investment Canada Act* in 2018-19

Investment Filings under the Act

The following section provides information on the scope, scale and origin of investments by non-Canadians in Canada over the last fiscal year that were subject to the filing requirements in the Act.

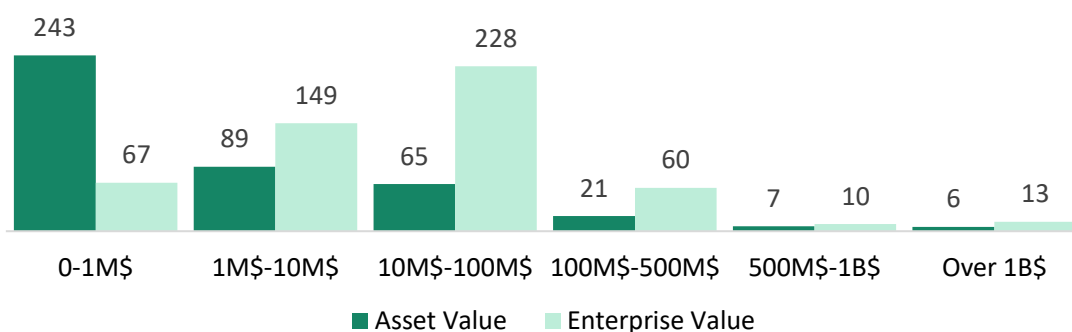
The report distinguishes between “Enterprise Value” and “Asset Value”. The value of an investment is calculated in one of these two ways, depending on the nature of the investment. For direct investments by private sector investors from WTO member countries, the “Enterprise Value” of the Canadian business to be acquired is calculated to determine if the investment exceeds the threshold for a net benefit review. Enterprise Value is a calculation that takes into account market value, debt and cash. The value of the investment is calculated using the “Asset Value” of the Canadian business when an investor is establishing a new business, is a state-owned enterprise or non-WTO member, or is investing indirectly. Asset value is the value of the assets according to the business' financial statements (book value).

Total Investments

In fiscal year 2018-19, there was a total of 962 certified notifications and approved applications under the Act, with a total Asset Value of \$41.24 billion and a total Enterprise Value of \$84.73 billion.^{iv} Figure 1 shows the breakdown of investments across a range of Asset Values and Enterprise Values.

Of the total number of investments, 55 percent (529) were measured by Enterprise Value, and 45 percent (433 investments) by Asset Value. Similar to last year, of these asset valuation transactions, the vast majority (approximately 90 percent) were valued at or below \$100 million. The Enterprise Value investments reflect a much more varied range of values, with the largest segment (228 out of 529) in the \$10 million - \$100 million dollar range.

Figure 1: Number of investment filings by value



Note: Categories include the highest bound, and exclude the lowest. (e.g. investments worth exactly 1M dollars are counted in the "0-1M\$" category).

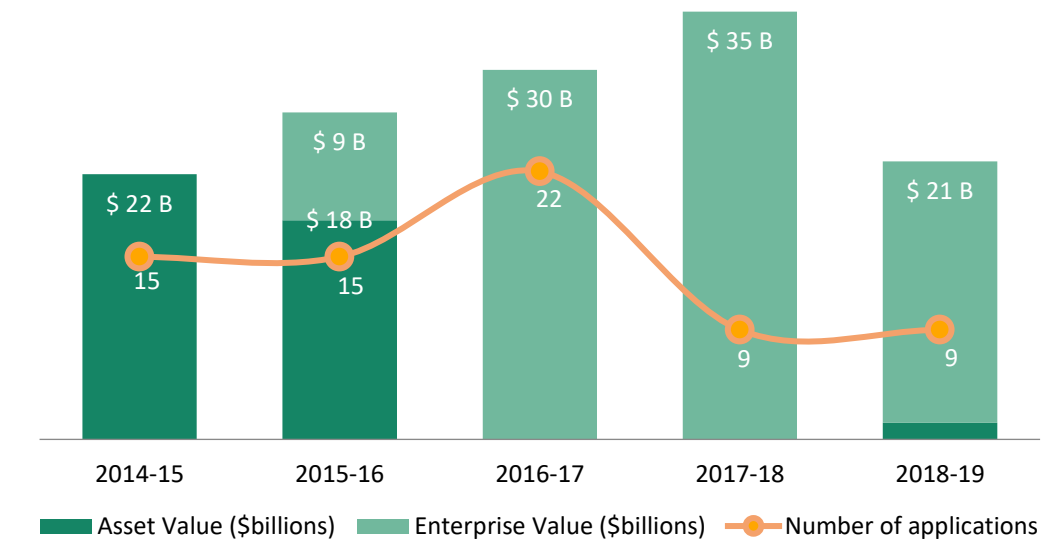


Applications for Review

An application for net benefit review is required for acquisitions of control of a Canadian business valued above the relevant threshold. As noted above, in fiscal year 2018-19, the threshold above which net benefit review and approval is required before an investment can be implemented increased to \$1.045 billion for private-sector investments from WTO-member countries and to \$1.568 billion for private-sector investors from trade agreement partners. This meant net benefit reviews were focused on those investments that are most significant to the economy and lessened the regulatory burden for international investors and Canadian businesses involved in smaller transactions.

As such, applications for review received in 2018-19 continued to be fewer than in years past. An average of 17 applications for review were approved over 2014-15 to 2016-17, while 9 applications for review were approved each in 2017-18 and in 2018-19 (Figure 2). The total value for the eight applications in the last fiscal year totaled \$21.48 billion in Enterprise Value². The statutory timeframe for net benefit reviews is 45 days with a potential additional 30 days if needed. In 2018-19, the actual average length of review was 72 days from certification to approval, with a median review period of 64 days. The average was affected by one review that was longer than usual (182 days), with the consent of the investor. This year's average and median was very similar to those in 2017-18, with 77 days and 72 days respectively.

Figure 2: Net Benefit Applications Approved



² As noted previously, because there was one application calculated in asset value, to preserve commercial confidentiality, the specific amount of the assets has not been indicated.



Notifications

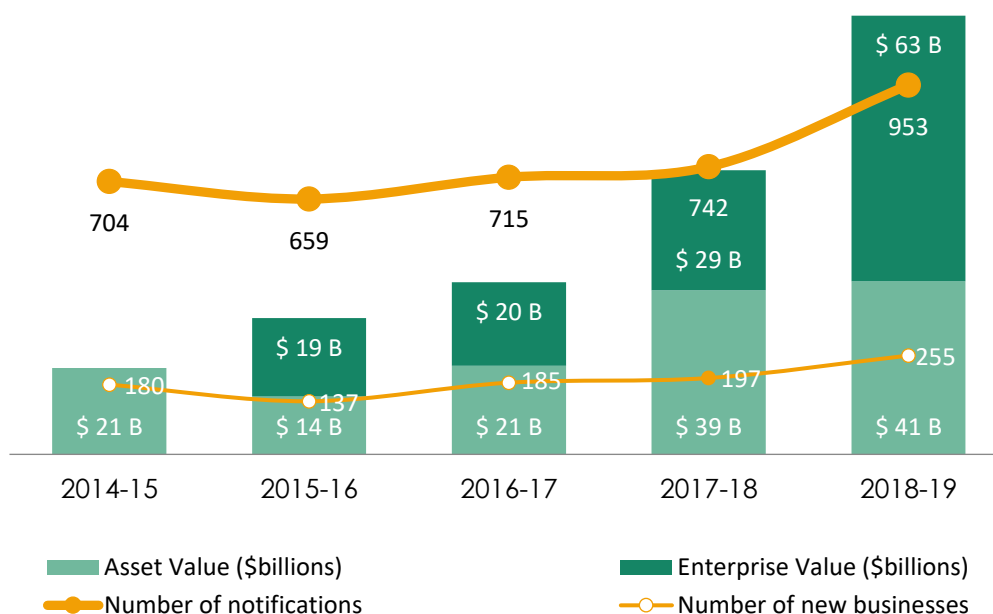
A notification is required to be filed for acquisitions of control of a Canadian business valued below the net benefit review threshold and for investments to establish a new Canadian business. This fiscal year saw a 28% increase in the number of notifications, with a total of 953 certified. The total value of these investments was \$41.24 billion for those measured in Asset Value and \$63.25 billion for those measured in Enterprise Value (Figure 3). There was a significant increase in the number of investments notified relative to 2017-18, where there were 742 notifications certified. However, the value of the transactions was similar or lower than in the previous year, with the total values of \$39.09 billion in Asset Value and \$28.56 billion for Enterprise Value.

Overall, consistent with the pattern for past years, the number of notifications associated with the acquisition of control of an existing Canadian business was significantly larger (698, or 73 percent of overall notifications) compared to the number of notifications associated with the establishment of a new Canadian business (255, or 27 percent).

The average value of notifications filed by Asset Value in 2018-19 was \$95.47 million. The five largest Asset Value notifications accounted for 70 percent, or \$28.73 billion, of the \$41.24 billion total. For those notifications measured by Enterprise Value, the average value saw a substantial increase to \$121.40 million, representing an 87 percent increase over the previous year's average of \$64.77 million. The five largest notifications measured by Enterprise Value totaled \$33.99 billion or 54 percent of the \$63.25 billion total.

These increases can in part be attributed to the corresponding increased FDI inflows to Canada, and in part the continuing increase in the threshold for net benefit reviews. Indirect transactions are another factor in the high total asset value. In 2018-19 there were five notifications of indirect investments with an Asset Value over \$1 billion dollars. These investments were not subject to net benefit review because they were part of a larger global transaction and therefore the investor was not required to submit an application for review but a notification under the Act.

Figure 3: Notifications



Investment by Sector

Using the North American Industry Classification System (NAICS), investments into Canada are characterized as generally falling into five broad sectors^y. Consistent with a shift to an innovative and knowledge-based economy, 2018-19 saw a continuing increase in investment in the Business and Services Industries sector, from \$4.39 billion in 2017-18 to \$5 billion in Asset Value and more significantly from \$13.01 to \$36.83 billion in Enterprise Value.

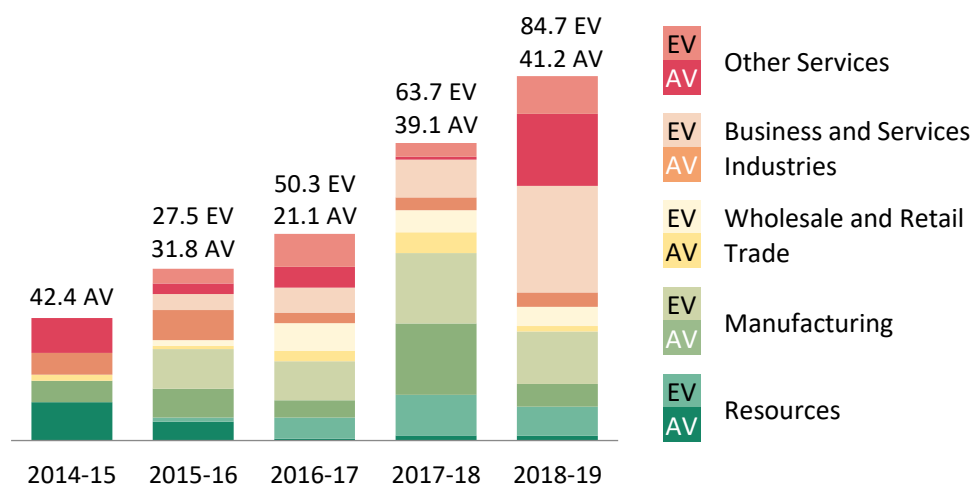
In contrast, investment in the manufacturing sector declined, following high levels in the previous year, from \$24.72 billion to \$7.88 billion in Asset Value, and \$24.29 billion to \$18.11 in Enterprise Value.

Table 1: Investments by sector

	Number of investments	Value of Investments (\$M)	
		Asset Value	Enterprise Value
Resources	40	\$1,601	\$10,052
Manufacturing	194	\$7,876	\$18,106
Wholesale and Retail Trades	126	\$1,846	\$6,686
Business and Services Industries	353	\$5,001	\$36,831
Other Services	249	\$24,921	\$13,058

Figure 4 below demonstrates the relative values of investment in each of these sectors across the last five fiscal years.

Figure 4: Asset Value (AV) and Enterprise Value (EV) by Sector (notifications & applications)



Note: Because there was one application for review calculated in asset value, to preserve commercial confidentiality, the specific amount of those assets has not been included in the Asset Value amount for 2018-19.



Investment by Country or Region of Origin

In 2018-19, the top three source countries or regions of origin for investment accounted for approximately 86 percent of all in-bound investment, including 94 percent of the total value of investments measured by Asset Value, and 92 percent by Enterprise Value.

Table 2: Top Investors

	Number of investments	Value of Investments (\$M)	
		Asset Value	Enterprise Value
United States	564	\$36,469	\$66,396
European Union	230	\$2,074	\$11,423
China	36	\$1,457	\$210
India	22	\$9	\$23
Iran	19	\$3	\$2
Switzerland	15	\$721	\$872
Japan	14	\$154	\$237
Australia	12	\$1,598	\$1,329

Of these top source countries or regions the United States remained the number one source of investments in Canada under the Act, accounting for 59 percent of the investments.

The European Union remained the second largest regional source of in-bound investment. In particular, there were 74 investments from the United Kingdom in 2018-19, compared to 33 in 2017-18 and 41 in 2016-17. A breakdown of European Union investment is at Table 3 below.

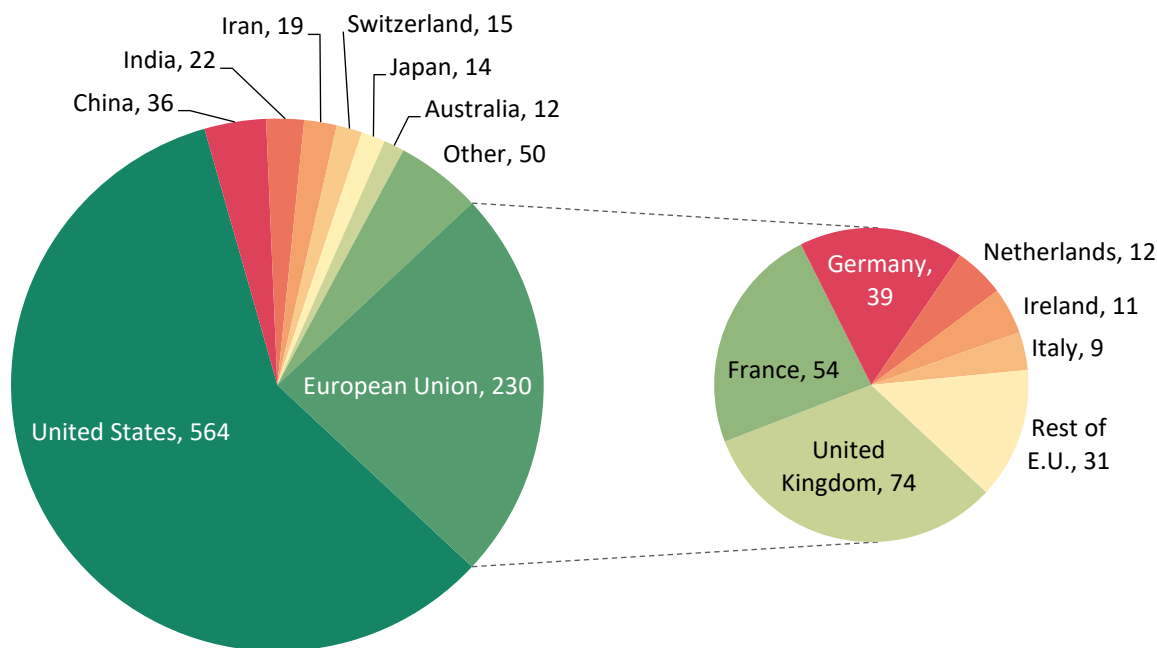
Table 3: Top Investors from the European Union

	Number of investments	Value of Investments (\$M)	
		Asset Value	Enterprise Value
European Union	230	\$2,074	\$11,423
United Kingdom	74	\$593	\$3,098
France	54	\$1,083	\$5,947
Germany	39	\$59	\$1,427
Netherlands	12	\$82	\$116
Ireland	11	\$8	\$366
Italy	9	\$6	\$98

As indicated in Table 2, the value of investments from China continued to fall significantly behind the United States and the EU in terms of Enterprise Value and overall number of investment filings. In the last fiscal year, most investments from China were for the establishment of new businesses (19 out of 36), not acquisitions of existing businesses or assets.



Figure 5: Investment by Country of Region or Origin



Note: Investments from Iran, were largely by individuals primarily in the Wholesale and Retail Trade Sector, mostly valued under \$1 million.

Sectoral Investment by Top Source Countries or Regions

A detailed breakdown by sector for each of the top three source countries or regions of origin is as follows:

- United States: 203 investments (36 percent) were in the business and services sector, followed by 168 investments in the resources sector, 119 investments in the other services sector and 62 investments in wholesale and retail sector. The remaining 12 investments were in the resources sector.
- EU: As with the United States, the business and services sector represented the largest destination of investment from EU members, with 87 out of 230 investments, or 38 percent, in this sector. This was followed by the manufacturing sector with 51 investments, then other services with 52 investments, followed by the wholesale and retail sector with 31 investments and 9 investments in the resources sector.
- China: Business and services was the highest-ranking sector with 10 investments out of a total of 36 investments. This was followed by the sector for other services with 9 investments, and the manufacturing sector with 7. The resource sector and the wholesale and retail sector each accounted for 5 investments.



Figure 6: Investment by Country or Region of origin and Sector

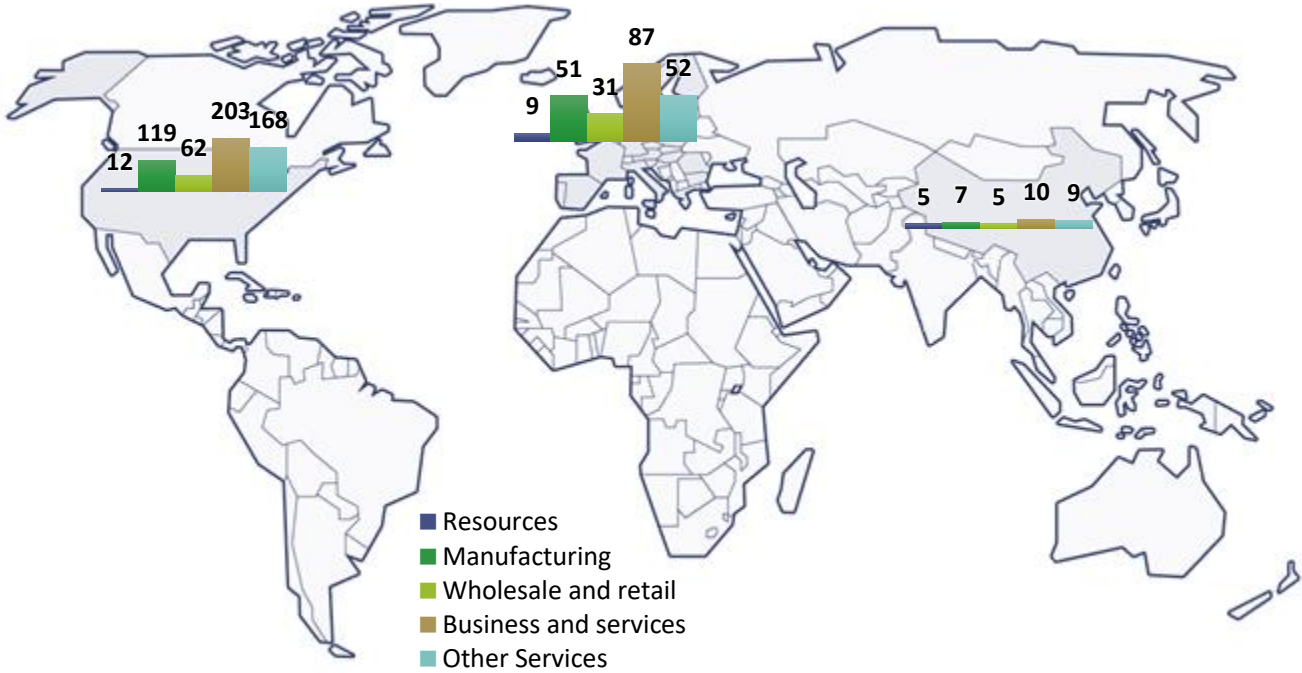


Figure 7: Value of Investments by Principal Province of Destination

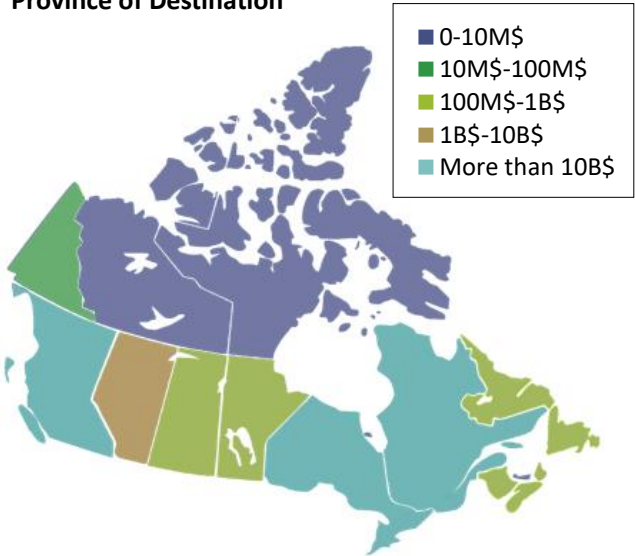
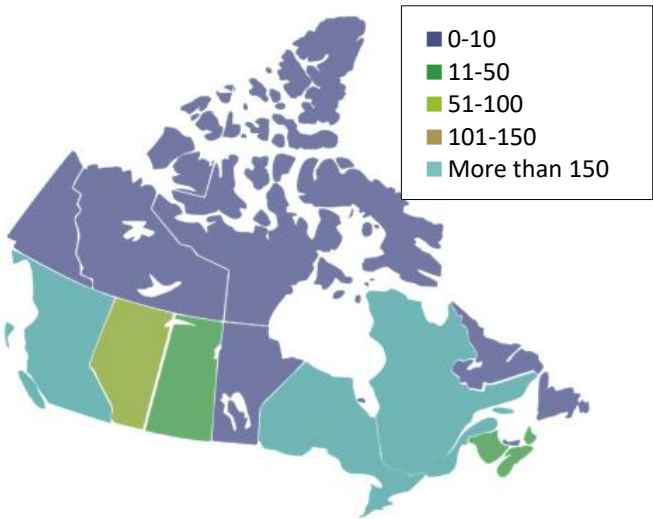


Figure 8: Number of Investments by Principal Province of Destination



National Security Activity

Since 2015-16, this Report has included information on the administration of the national security provisions of the Act. This information on the process and outcomes under these provisions is to further transparency and to improve regulatory certainty for Canadian businesses and investors.

In addition to the information provided in this report, prospective investors and Canadian businesses seeking information on the administration of the national security provisions of the Act are encouraged to review the *Guidelines on the National Security Review of Investments*, published in December 2016. The Guidelines describe the national security review process, including setting out a non-exhaustive list of factors that the Government may consider when assessing whether an investment poses a national security risk.

With respect to specific investments, it is recommended that international investors, Canadian businesses, and their advisors contact the Investment Review Division to discuss proposed investments and, where applicable, to file a notification at least 45 days prior to planned implementation, whenever such investments may involve the factors outlined in the Guidelines.

Set out below are statistics on the administration of Part IV.1 in the last fiscal year, including outcomes of the review process under the ICA. This report also includes information on characteristics of investments that have required intervention under the ICA and on mitigation conditions. However, details of specific cases are not included in this Report, in accordance with the confidentiality and privileged information requirements of the Act, and national security considerations.



The National Security Review Process

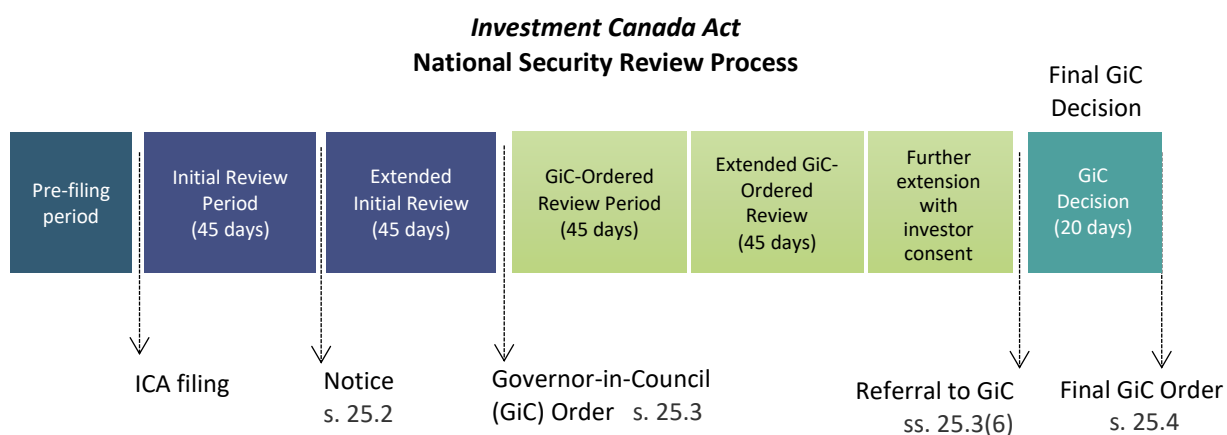
All 962 certified notifications or approved applications for net benefit review submitted in fiscal year 2018-19, as well as other investments which were not subject to filing requirements, were reviewed under the multi-step national security process set out in the Act.

The initial period of review begins as soon as the Minister becomes aware of the investment, which may be pre-filing, and ends 45 days after the application or notification is certified as complete. During the initial period of review and throughout the review process, the security agencies and the other relevant prescribed investigative bodies, including Innovation, Science and Economic Development Canada, assess information and intelligence related to the Canadian asset being acquired or business being established, the terms of the investment and the foreign investor. They may consult with Canada's allies in order to determine whether the investment could cause injury to national security. The Minister may also require the investor or the Canadian business or entity to provide any information considered necessary for purposes of the review of the investment.

At any time before the end of the 45 day period following the certification of the filing:

- i. The Minister may send the non-Canadian a notice under section 25.2 that an order for review of the investment may be made by the GiC under section 25.3 of the Act. A notice under section 25.2 may be issued if there are reasonable grounds to believe the investment could be injurious to national security. The effect of the notice is to prohibit implementation of the investment if it has not yet been implemented. The notice triggers an additional 45 day period for review, by the end of which either a notice of no further action is issued under paragraph 25.2(4)(a) or an order is issued by the GiC under section 25.3. Or,
- ii. The GiC may issue an order under section 25.3. A section 25.3 order may be issued on the recommendation of the Minister, if, after consultation with the Minister of Public Safety, the Minister considers the investment could be injurious to national security. The effect of the order is to prohibit implementation of the investment if it has not yet been implemented. It triggers an up to 90 day (or longer with the investor's consent) period for review, by the end of which either a notice of no further action is issued under paragraph 25.3(6)(b) or an order containing measures to protect national security may be issued by the GiC under section 25.4.

A section 25.3 order is required to have been made by the GiC before an order can be imposed on the investment under section 25.4. This order can block the investment, order divestiture, or impose conditions on the investment to protect national security. However, a section 25.3 order is not required for the security and intelligence agencies and other prescribed investigative bodies to review the investment. The legal authorities under the Act to investigate are the same throughout each period of the multi-step review process.



Notes: The initial period of review may begin during the pre-filing period but the statutory clock begins with a certified filing (or implementation, where a filing is not required). Time periods are prescribed in the [National Security Review of Investments Regulations](#) and reflect maximums.



Statistical Information on National Security Reviews in 2018-19

Of all of the investments reviewed over the past year, there were nine notices issued under section 25.2 of the Act. With respect to two of those nine, further notices were issued advising that no further action would be taken under the ICA. For the remaining seven investments, a section 25.3 order was issued to continue the review. As the result of that further review, in three cases no further action was required under the ICA; in two cases the investor withdrew the investment proposal; and in two cases the GiC issued an order directing the investor to divest itself of the investment.

The average length of review for the seven investments subject to a section 25.3 order was 161 days, from certification to final resolution. Table 4 below sets this data out for the last fiscal year and going back to 2009, when the provisions were first introduced.

Table 4: Notices and Orders issued under Part IV.1

	25.2 Notice of potential s.25.3 Order for review	Para.25.2(4)(a) Notice of no further action under ICA	Withdrawal following s.25.2 Notice	s.25.3 Order for review	Para.25.3(6)(b) Notice of no further action under ICA	Withdrawal after s.25.3 Order for review issued	s.25.4 Final Order
2018-19	9	2	0	7	3	2	2 Divest
2017-18	4	1	1	2	0	1	1 Block
2016-17	4	2	0	5*	0	0	3 Divest 2 Conditions Imposed
2015-16	0	0	0	0	0	0	0
2014-15	8	2	1	5	0	0	2 Divest 2 Conditions Imposed 1 Block
2013-14	1	0	0	1	0	0	1 Block
2012-13	3	1	0	2	0	1	1 Block
2011-12	0	0	0	0	0	0	0
2010-11	0	0	0	0	0	0	0
2009-10	1	0	1	0	0	0	0
TOTAL	28	8	3	22*	3	4	7 Divest 4 Block 4 Conditions Imposed

* One review is subsequent to a court order.

Note: The fiscal year runs April 1 to March 31. Actions following the issuance of a 25.2 notice may have been taken in a subsequent fiscal year but were further to a 25.2 notice made in the fiscal year of reporting. For example, for fiscal year April 1, 2018 to March 31, 2019, nine 25.2 notices of potential s.25.3 order for review were made. The resulting actions may have been in the 2018-19 or 2019-20 fiscal year. Where a 25.2 notice was not issued prior to a s.25.3 order for Review, all actions related to the case are ascribed to the fiscal year in which the s.25.3 order for review was issued. As a result of this method of reporting, one investment that had been previously reported under 2015-16 is now being reported under 2014-15.



Characteristics of Investments that have been subject to Section 25.3 Orders for Review

Under Part IV.1 of the Act, proposed or implemented investments are assessed based on the facts and context related to the particular transaction under review. In assessing investments under the national security provisions of the Act, and as articulated in the Guidelines on the National Security Review of Investments, the terms of the investment, the nature of the asset or business activities involved, and the parties, including the potential for third-party influence, are considered. Determinations made by the Minister or Governor-in-Council under Part IV.1 of the Act are made on a case-by-case basis. The information provided below on the characteristics of investments that have been subject to orders under section 25.3 of the Act, from fiscal years 2012-13 to 2018-19, should be read in that context.

Table 5: Country of Origin and Sector of Investments Subject to Section 25.3 Orders

Origin*	Industry Sector (NAICS or SIC)**	Outcome following Section 25.3 Order
2018-19		
China	4851 (NAICS) - Urban transit systems	Divestiture
China	3333 (NAICS) - Commercial and service industry machinery manufacturing	Withdrawal
Singapore	3325 (NAICS) - Hardware manufacturing	Withdrawal
Switzerland	3336 (NAICS) - Engine, turbine and power transmission equipment manufacturing	Divestiture
China	5223 (NAICS) - Activities related to credit intermediation	No further action required under the ICA
China	4541 (NAICS) - Electronic shopping and mail-order houses	No further action required under the ICA
Switzerland	3339 (NAICS) - Other general-purpose machinery manufacturing	No further action required under the ICA
2017-18		
China	3254 (NAICS) - Pharmaceutical and medicine manufacturing	Withdrawal
China	2379 (NAICS) - Other heavy and civil engineering construction	Block
2016-17		
China	3351 (SIC) - Manufacturing Industries - Telecommunication Equipment Industry	Conditions Imposed
China	5179 (NAICS) - Other telecommunications	Divestiture
China	3366 (NAICS) - Ship and boat building	Divestiture
China	3359 (NAICS) - Other electrical equipment and component manufacturing	Conditions Imposed
Cyprus	4821 (NAICS) - Rail transportation	Divestiture
2014-15		
China	3351 (SIC) - Manufacturing Industries - Telecommunication Equipment Industry	Divestiture
China	3359 (SIC) - Manufacturing Industries - Other Communication And Electronic Equipment Industries	Conditions Imposed
China	7720 (SIC) - Business Service Industries - Computer And Related Services	Conditions Imposed
Russia	0710 (SIC) - Mining & Quarrying & Oil Well Industries - Crude Petroleum And Natural Gas Industries	Block
United Kingdom	7720 (SIC) - Business Service Industries - Computer And Related Services	Divestiture
2013-14		



Egypt	7720 (SIC) - Business Service Industries - Computer And Related Services	Block
2012-13		
China	7720 (SIC) - Business Service Industries - Computer And Related Services	Block
Russia	4821 (SIC) - Communication & Other Utility Industries - Telecommunication Carriers Industry	Withdrawal

* The Origin column provides the Country of Origin of the Ultimate Controller of the Investor, as indicated by the Investor in the filings required by the Investment Canada Regulations.

** Investors are required to provide a NAICS code indicating the industry sector of the investment. Prior to 2015-16, the Standard Industrial Classification system was used. In this table, references are to either the 1980 Standard Industrial Classification - Establishments (SIC-E) or the 2012 version of NAICS, as indicated.

Note: The fiscal year runs April 1 to March 31. The s.25.3 order for review and subsequent s.25.4 order or outcome is ascribed to the fiscal year in which the s.25.2 notice was issued. If no such notice was issued, the action is ascribed to the fiscal year in which the s.25.3 order for review was made. As such, one case that had been previously reported under 2015-16 is now being reported under 2014-15.



Administrative Practices

Both internal administrative and external practices around the provisions in Part IV.1 have evolved considerably since they were introduced in 2009. Increased transparency in the administration of Part IV.1 has allowed for more regulatory certainty for Canadian businesses and investors, and for a maturing in practice in the external advisory community as well.

Under the Act, the Government has the authority to review a broad scope of investments, including those for which filings are not required under sections 12 or 17 of the Act, and the authority to intervene in those investments ex-post. Increasingly, Canadian businesses, investors and their advisors are voluntarily engaging with the Investment Review Division in advance of less-than-control investments when the prospective investment may present factors set out in the Guidelines on the National Security Review of Investments. In other cases, where the Minister has become aware of such investments through environmental scanning or public information sources, further information has been required from the parties under section 25.2. This engagement has allowed the Investment Review Division to assess and advise on the likelihood that further review or intervention may be required.

External practice has also shifted notably in respect of filings for notifiable transactions. Following the issuance of the Guidelines in 2016 and annual reporting on the national security review provisions, the proportion of investments for which a filing is submitted in advance of implementation has increased significantly, and the characteristics of advance filings correlate strongly with the factors set out in the Guidelines. As mentioned above, advance filings have allowed the Investment Review Division to assess and advise on the likelihood that further review or intervention may be required and to consider the potential for structural changes to a transaction to mitigate potential national security risks.

If the Investment Review Division becomes aware of a situation where it believes an application for review or a notification has not been filed under sections 17 or 12 respectively, it may contact the **non-Canadian** to advise them of their obligations under the Act and may, pursuant to s. 25.2, require the appropriate filing or other information considered necessary to determine whether there are reasonable grounds to believe that the investment could be injurious to national security.

In all cases, Investment Review Division officials are available to meet with Canadian businesses and investors about their investment projects. Such consultations provide a useful forum for discussion and the exchange of views which may serve to eliminate possible difficulties and encourage the development of investments of benefit to Canada. The Investment Review Division will also reach out to Canadian businesses, investors or their counsel proactively where appropriate, in the service of ensuring timely, effective, and more transparent reviews.

Ultimately, while guidance and statistics about prior investment reviews can be illustrative for Canadian businesses and prospective investors, every case turns on the specific facts of the particular investment. This serves to reinforce the importance of contacting the Investment Review Division in advance of implementing an investment that may feature factors relevant to national security considerations.



Mitigation Considerations

As noted above, early engagement may also allow for structural changes to an investment to be considered that may mitigate national security concerns in advance. In the context of reviews, in all cases, the sufficiency of Canada's domestic laws designed to protect against threats to critical infrastructure, organized crime, and proliferation of sensitive goods, technology or data, was considered before an order was issued or under the *Investment Canada Act*. Measures to mitigate the potential harm to national security were also considered and in some cases were imposed through conditions in a section 25.4 order on the investment. The following are examples of such measures:

- Requiring Government approval of proposed business locations in order to avoid proximity to strategic assets
- Requiring that all servicing and support for some or all business lines be conducted in Canada
- Creating approved corporate security protocols to safeguard information and access to a site
- Requiring the engagement of a security-cleared compliance officer to ensure and report on compliance
- Requiring third-party compliance audits on request
- Requiring access to facilities for compliance inspection
- Requiring employees with access to sensitive information to attest to compliance with approved security protocols
- Notifying existing customers of pending new ownership
- Providing notice to the Minister of new prospective employees who would have access to sensitive information or technology as a part of their job description
- Excluding sensitive business segments or assets from a transaction

Conclusion

Canada continues to welcome foreign investment that benefits Canadians and our economy. The Government is committed to administering the Act in a transparent and professional manner while protecting commercially confidential information and national security. The disclosure provided in this Report is to further these objectives. Investments are examined on a case-by-case basis under the *Investment Canada Act* and Canadian businesses and investors are strongly encouraged to account for the ICA process in their investment planning and to engage with the Investment Review Division as early as possible on specific investment proposals.



Appendix

Interpretive Notes

- All references to the 2018-19 fiscal year in data, tables, charts and explanations mean from April 1, 2018, to March 31, 2019.
- In the section titled “Activities under the *Investment Canada Act* in 2018-19”, investments are ascribed to the year corresponding to their final action: the certification date for notifications, and the date of the Minister’s decision for applications.
- Acquisitions are recorded by the Asset Value or the Enterprise Value of the Canadian business to be acquired, based on its most recent audited financial statements, not by the purchase price. The value of a new business proposal is recorded on the basis of the planned amount of investment over the first two years.
- The actual number and value of acquisitions of control and new business establishments by international investors may not be wholly reflected for reasons, which include the following:
 - From time to time, two or more investors may submit applications for review to acquire the same Canadian business. In such cases, each proposal is recorded as a separate transaction.
 - In June 1999, responsibility under the Act for investments related to cultural activities listed in Schedule IV of the *Investment Canada Regulations* was transferred to Canadian Heritage. Accordingly, our statistics since that time do not include foreign investments in Canadian businesses engaged strictly in activities listed in Schedule IV.
 - Most notifications and applications are submitted to Innovation, Science and Economic Development Canada either pre-implementation or within the allowed post-implementation time frame, and processed promptly under the terms of the Act. However, for commercial or other reasons, investors who have submitted a notification or application may subsequently choose not to implement the investment or to implement it at a later time.

Data Comparison with Other Statistical Sources

The principal purpose of the Act is the review of investment activity by international investors. For each fiscal year, a report on the administration of the Act is produced and made available to the public.

Data collection is limited to new business proposals and acquisitions of control by foreign investors. Results only represent a portion of the value of international investment in Canada, and therefore cannot be compared with either the foreign direct investment flows or stock figures published by Statistics Canada. For example, the value of major plant expansions by established foreign investors in Canada is not captured under the Act.



Endnotes

ⁱ The threshold for non-WTO investors is \$5 million for direct and \$50 million for indirect acquisitions (Asset Value). Indirect investments by WTO investors are not subject to net benefit review, but the investor must file a notification.

ⁱⁱ <https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk00064.html#p2>

ⁱⁱⁱ An indirect acquisition is an acquisition of a foreign company that has Canadian subsidiaries. A notification is also required in cases where an international investor starts a new business, or acquires control of a Canadian business valued below the net benefit review threshold.

^{iv} Acquisitions are recorded by the Enterprise Value of the Canadian business to be acquired or the Asset Value based on its most recent audited financial statements.

^v The five sectors are derived from North American Industry Classification System codes, with each sector composed of subsectors. The business sector mainly includes service-providing businesses, such as computer services, engineering services, employment agencies and advertising agencies. The manufacturing sector includes businesses that produce or manufacture different types of goods, such as machinery, equipment, parts, food, beverages, etc. The resource sector includes agriculture and related services, oil, mining and quarrying industries, crude petroleum and natural gas industries, etc. Wholesale trade includes the sale of different types of equipment, machinery, supplies and chemicals. Retail trade includes clothing, prescription drugs, automobiles and other consumer goods. The other services sector includes businesses in the finance and insurance industries, real estate operators, insurance agent industries, communications, and transportation and storage.

