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## Canada Announces Intention to Liberalize Foreign Ownership Restrictions in the Uranium Mining Industry

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On March 3, 2010, the federal government announced that it intends to liberalize the foreign investment restrictions in Canada's uranium mining sector. The government wants to "ensure that unnecessary regulation does not inhibit the growth of Canada's uranium mining industry by unduly restricting foreign investment." Canada is currently the world's largest producer of uranium, and foreign investors have shown significant interest in making investments in the sector.

The existing Non-Resident Ownership Policy in the Uranium Mining Sector prevents non-Canadian residents from acquiring more than a 49% ownership interest in a uranium-mining property unless the property is in fact "Canadian-controlled." With federal government approval, exemptions to this policy are available where it can be demonstrated that no Canadian partners can be found. Uranium exploration properties are not subject to this policy.

The government's announcement suggests that the government may treat proposed acquisitions in the uranium sector as it does proposed acquisitions in other industry sectors.

The announcement also seems to signal that Canada may be prepared to unilaterally abolish the ownership policy. In the past, recommendations to liberalize foreign ownership restrictions in the uranium mining sector have been accompanied by statements that this should occur only if Canada receives reciprocal benefits from the foreign investor's country of origin. This change would be consistent with recent amendments to the treatment of uranium investments under the *Investment Canada Act*. Previously, a proposed direct acquisition of control of a Canadian business operating a uranium-producing mine in Canada was subject to a "net benefit" review if the acquirer was not Canadian and the asset value of the Canadian business exceeded a threshold of C\$5 million. In March 2009, this low threshold for review of acquisitions in the uranium mining sector under the *Investment Canada Act* was repealed.

Currently, a proposed direct acquisition of control of a Canadian business that engages in the production of uranium and owns a uranium-producing property in Canada can be subject to two types of review under the *Investment Canada Act*, which are not mutually exclusive:

- **Net Benefit Review.** If the asset value of the Canadian business exceeds the current threshold of C\$299 million, a proposed acquisition will be reviewed to determine if it meets a "net benefit to Canada" test. The acquisition of a 49% ownership interest in a uranium-producing property in which a Canadian

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exercises control in fact would not be an acquisition of control under the *Investment Canada Act* and therefore would not be subject to a review.

- **National Security Review.** Any investment (regardless of the size of the target or of the investment) can be reviewed by the Minister of Industry to determine if it could be “injurious to national security.” We expect national security reviews to be infrequent and, in fact, the only known case to date in which the government exercised these powers was in connection with the proposed acquisition of a Canadian uranium exploration and development company in August 2009.

The government’s announced intention to liberalize the restrictive non-resident ownership policy in the uranium mining sector will make the government’s foreign ownership policy for this sector consistent with the recent amendments to the *Investment Canada Act*.

The announcement is another signal from the government that it welcomes foreign investment. We will continue to monitor and report on developments in this area. 