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## NEWS RELEASE

### **Greater Clarity Required in Canada's Foreign Investment Rules** ***Keep the net benefit test, but provide more details about what is expected of investors***

**Montreal** – Canada's competitiveness and public confidence in the national interest served by foreign direct investment (FDI) will suffer unless the federal government clarifies the rules and policy framework underlying the *Investment Canada Act* (ICA), argues a new study from the Institute for Research on Public Policy.

In *Foreign Direct Investment and the National Interest: A Way Forward*, foreign investment and competition lawyers Dany H. Assaf and Rory A. McGillis provide a comprehensive assessment of Canada's FDI policy following a number of high-profile cases, including the takeovers of Nexen and Progress Energy Resources.

Assaf and McGillis assess the suitability of the ICA in an increasingly dynamic and complex global trade and investment environment, and compare it with the foreign investment screening regimes of 11 other leading jurisdictions.

They warn that uncertainty will increase and public acceptance diminish if Canada continues to amend policy in response to controversial issues, as happened with Nexen and Progress Energy Resources. "Canada needs to stay ahead of global trends and the next big transaction and define its rules and expectations more clearly and coherently," said Assaf.

"The structure and track record of Canada's foreign investment policy stack up very well on the international stage," noted McGillis.

However, as Canada has followed the global trend toward greater scrutiny of foreign investment, the lack of transparency in our review process has raised important questions about overall policy directions for investors and Canadians alike, said Assaf.

The authors recommend keeping the net benefit test, the centrepiece of the current review process, but also focusing on better communicating to investors what is expected of them. They recommend the government

- modernize the net benefit test, to include criteria such as the investment's compatibility with environmental, fiscal and trade policy objectives;
- publish a model list of undertakings to inform investors of the requirements that may be attached to a transaction's approval;
- adopt formal guidelines for national security reviews; and
- amend the guidelines for investments by state-owned enterprises to clarify issues such as reciprocity, what constitute "exceptional" circumstances and other specific requirements.

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*Foreign Direct Investment and the National Interest: A Way Forward*, by Dany H. Assaf and Rory A. McGillis, can be downloaded free of charge from the Institute's Web site ([www.irpp.org](http://www.irpp.org)).

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