Written Submission for the study of Bill C-34 by the Standing Committee on Industry and Technology

By: The Prospectors & Developers Association of Canada (PDAC)

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PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA | ASSOCIATION CANADIENNE DES PROSPECTEURS ET ENTREPRENEURS

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Via email: INDU@parl.gc.ca

Joël Lightbound, M.P.
Chair, Standing Committee on Industry and Technology
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Re: Bill C-34 — Amendments to the Investment Canada Act

Dear Joël Lightbound:

The Prospectors & Developers Association of Canada (PDAC) is the leading voice of the mineral exploration and development industry, which supports 719,000 people in direct and indirect employment, and contributes more than $100 billion to Canada's GDP every year. The industry is also the largest private-sector industrial employer on a proportional basis of Indigenous Peoples in Canada, and a key partner of Indigenous businesses.

Representing over 7,000 individual and corporate members both in Canada and around the world, PDAC's work centers on supporting a competitive, responsible, and sustainable mineral industry. The mineral industry is the largest group of public issuers in Canada, accounting for 1/3 of all companies listed on Canadian exchanges and more than half of the issuers listed on the TSX Venture exchange. This combined cohort represents roughly 40% of all of the world's publicly listed mineral industry companies and they operate globally with nearly half of all active projects, some +5,300, located abroad.

Canada is also a top destination for financing the mineral industry with nearly ¼ of all funds invested in the sector over the last decade coming from the Canadian marketplace. With this context, we must be cognisant that legislation will not create barriers that will cause our rank to fall.

Canada's vast potential for mineral discovery is one of the greatest economic opportunities of this generation and incentivizing new discoveries is a social imperative that can support a foundation for global change. To capitalize on this opportunity, we must see sustained investment in mineral exploration and downstream processing capacity, so that Canadian minerals and metals can reach markets within realistic timeframes, deliver the desired benefits and drive meaningful change.

Demand for critical minerals, in particular, is likely to increase substantially as jurisdictions around the globe begin their transition to a lower-carbon economy. There is no global energy transition without minerals, and Canada can be the supplier-of-choice for our own economy, and those of our strategic partners. Failure to enact policy that strengthens our mineral sector will simply increase Canada's reliance on foreign production of critical minerals, in all likelihood from jurisdictions with far lower standards and protections on the environmental, sustainability and governance best practices.

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PDAC recognizes the importance of effectively addressing any national security concerns arising from foreign investments, and is supportive in principle of what bill C-34 is attempting to achieve. However, given that Canada's ability to capitalize on the generational opportunity that critical minerals can offer will be directly tied to Canada's mineral exploration and development sector having access to the land and capital needed to be successful, it is vital that governments in Canada do not place unintentional barriers that may exacerbate existing challenges.

CONSIDERATIONS & RECOMMENDATIONS

1. The unique nature of mineral projects, properties and assets under legislation

PDAC supports the intentions behind the proposed changes to the Investment Canada Act (ICA) to curtail the expropriation of Canadian assets and intellectual property (IP) to foreign state actors that pose risks to our national security. However, there are significant distinctions between assets and IP within the mineral exploration and development sector relative to other sectors that fall under the jurisdiction of the ICA. Mineral assets cannot be translocated by their very nature, whether they exist in Canada or elsewhere. In contrast, IPs and other assets within other industries that will be impacted from bill C-34 are mobile, and this difference may have significant implications.

Canadian Mineral properties and projects provide economic benefits proportional to the scale of activity and stage, from early exploration through to extraction. This is true irrespective of ownership or origin of investment. Additionally, a gap exists in Canada with respect to mineral processing capacity that in part stems from the significant deficit in transportation and energy infrastructure present in many regions of the country. This current state virtually ensures that a significant percentage of the critical minerals that may be extracted domestically will be destined for foreign processing and prevent Canada from benefiting from value-adding stages of mineral and industrial supply chains.

A ramping up of domestic processing capacity would drastically increase the probability that newly discovered deposits become new mines, as well as lower the likelihood that critical minerals and materials would leave Canada to other jurisdictions for value-adding stages. This would provide greater economic and employment benefits for Canadians in the value chain and ensure that these materials will be available for downstream use in Canadian manufacturing, specifically EV battery production.

- **Recommendation 1:** That the government of Canada significantly increase and expedite investment to boost critical mineral processing capacity in Canada.

2. Differentiating between assets located within and outside of Canada

Canada has become the preeminent destination for investment in mineral exploration and development with nearly $8 billion being spent domestically over the last two years looking for new mineral deposits. Our ability to attract this investment is underpinned by Canada's open, transparent and predictable

marketplace being coupled with world-leading environmental, social and governance requirements, best practice, as well as comprehensive disclosure requirements and regulatory scrutiny.

Exploration and development companies with little or no footprint in Canada still choose to headquarter and list their Companies in Canada expressly to benefit from these competitive advantages. In this regard, we have concerns that attempts to restrict ownership of foreign state actors in Canadian-based issuers that have extraterritorial assets may have unintended consequences countering the government's intentions as foreign companies may directly purchase the assets. At the same time an increase, or perception of an increase in regulatory oversight or restriction in accessing international investment, will put increased pressure on such companies to seek investment from other jurisdictions. In fact, the amendments included in Bill C-34 could actually accelerate the offshoring of mineral assets currently listed within Canada's capital marketplace and create a barrier going forward for Canadian mineral exploration companies in accessing prospective lands in foreign jurisdictions.

There is considerable risk in failure to provide an exemption to mineral deposits in non-Canadian jurisdictions. First, other jurisdictions where mineral exploration is prospective are likely to put in place their own measure to restrict access to Canadian exploration companies looking to operate within their borders. Even a perception that the involvement of a Canadian company could have negative ramifications on potential investment or development of a mineral project would likely result in new barriers and close off parts of the globe for Canadian listed companies in accessing prospective land.

In similar fashion, the proposed changes will incent companies operating internationally to headquarter outside of Canada, seek financing in non-Canadian markets, or possibly move assets outside of the public marketplace and all of the associated governance and regulatory scrutiny. This will, in effect, significantly dilute Canada's presence in the exploration community outside of Canada, reduce the competitiveness of Canadian capital markets and the likelihood that critical mineral assets located internationally will provide any positive inputs for the Canadian public.

- **Recommendation 2:** Exempt Canadian companies from the pre-filing notification regime for foreign investments into mineral projects or assets located outside of Canada.

3. Foreign companies exploring within Canada

While exploration and development in Canada is largely undertaken by Canadian companies, international exploration companies do operate within Canada's borders and can play an important role in our industry ecosystem. These companies may be seeking financing in non-Canadian markets and hold assets that may not trigger a pre-filing notification under the regime as currently written. The differential treatment of these two groups would place Canadian listed companies at a disadvantage, and have the potential to shift foreign investment into international players operating in Canada.

Being a Canadian company, as defined in the legislation, must not create an uneven playing field within the Canadian exploration landscape. Ensuring alignment of pre-filling notification obligations for all companies, regardless of origin, can protect against the possibility that international companies supplant Canadian companies within our own borders.

- **Recommendation 3:** Strengthen language in regulation to ensure that pre-filing notification obligations include international exploration companies operating but not listed in Canada are subject to the same requirements as Canadian listed companies.

4. Prescribed business activities

At this time, the prescribed businesses activities mentioned in the proposed changes to the ICA are unclear and forced divestitures announced in October 2023 indicate that the mineral industry or a subset of this industry will be directly targeted. It is imperative that Canadian companies and investors be made aware of what these prescribed business activities are, with sufficient time to understand their new obligations under the pre-filing notification regime. Insufficient time to prepare for these new requirements will likely result in missed investment opportunities, incorrect or incomplete filings, and saddle small and medium enterprises with an uneven regulatory burden relative to larger companies. Uncertainty on what constitutes a prescribed business activitiy may create a significant headwind for investment and a reduction in capital available to the exploration and development industry. Canada will need to very clearly define these activities, and ensure that they are not overly broad, capturing elements of industry that do not meet the intended level of risk to Canada's national security.

A clear definition of prescribed business activities will ensure that only those potential investments that meet the necessary requirements for pre-filing notifications will be filed, reducing regulatory burden and ensuring that a sufficient pool of capital remains available to Canadian companies.

- **Recommendation 4:** Expedite defining what constitutes a prescribed business activity and ensure the definition is clear, concise, and completed prior to Bill C-34 coming into force.

5. Timelines for the pre-filing notification regime

Investment opportunities in mineral exploration and development are inherently time sensitive and typically are heavily influenced by factors like commodity cycles, project development milestones or strategic opportunities. As such, ensuring that any potential review period be as short as possible will be essential in securing foreign direct investment into Canada and Canadian mineral projects. The risk that a potential review period could be 45 days, or longer if the Minister deems it appropriate, could provide a sufficient level of additional risk that ushers prospective investor appetite away from Canada, whether through a different marketplace or in a different sector. The committee has already received witness testimony that review periods are already in excess of 45 days, without the additional administrative burden on investigative bodies that will result from the adoption of the proposed new pre-filing notification criteria.

A transparent, predictable and timely review process is absolutely necessary to ensure that Canada's mineral exploration and development industry are able to access the capital required to maintain Canada as both the jurisdiction of choice for investment into the sector, and the international leader in exploration around the world.

- **Recommendation 5:** Ensure that in advance of the coming into force of Bill C-34 that the all government agencies involved in the review process be sufficiently resourced to ensure timely completion of all reviews under the Act and consider establishing a concierge service or similar to inform companies if a review is necessary within a time that aligns with normal exchange (i.e. TSX, TSX-V) and regulatory (i.e. IIROC) review processes, not exceeding 30 days of a pre-notification.

CONCLUSIONS

PDAC fully supports the government's efforts to ensure Canadian intellectual property and critical assets stay in Canada. However, efforts need to be made to ensure that such efforts do not result in the opposite effect, constraining the capital required for the industry's success and limiting Canada's access to critical mineral resources located abroad. We thank the committee for the opportunity to provide comment on Bill C-34 and would welcome an opportunity to appear before the committee to discuss our recommendations and answer questions related to Canada's mineral exploration and development industry.