

## Canada

### Investment Canada Act (1985)

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## Contents

- Short Title
- Purpose
- Definitions
- Part I. Organization and mandate

- Minister
- Director of Investments
- Part II. Exemptions
- Part III. Notification
- Part IV. Review
- Part IV.1. Investments injurious to national security
- Part V. Rules and presumptions
  - Canadian status rules
  - Acquisition of control rules
  - Timing rules
  - Sending notices, receipts or demands
  - Operation of other Acts
- Part VI. General**
  - Regulations
  - Privileged information
  - Written Opinions
  - Guidelines and Interpretation Notes
  - Report
- Part VII. Remedies, offences and punishment
- Part VIII**
- Part IX Transitional, Consequential Amendments and Commencement**
  - Transitional

Act current to 2019-07-29 and last amended on 2018-12-30

# Investment Canada Act

R.S.C., 1985, c. 28 (1st Supp.)

An Act respecting investment in Canada

## Short Title

### 1. Short Title

This Act may be cited as the Investment Canada Act.

## Purpose

### 2. Purpose of Act;

Recognizing that increased capital and technology benefits Canada, and recognizing the importance of protecting national security, the purposes of this Act are to provide for the review of significant investments in Canada by non-Canadians in a manner that encourages investment, economic growth and employment opportunities in Canada and to provide for the review of investments in Canada by non-Canadians that could be injurious to national security.

## Definitions

### 3. Definitions

In this Act;

Agency: [Repealed, 1995, c. 1, s. 45]

assets: includes tangible and intangible property of any value;

business: includes any undertaking or enterprise capable of generating revenue and carried on in anticipation of profit;

Canada: includes the exclusive economic zone of Canada and the continental shelf of Canada; (Canada)

Canadian means;

a. a Canadian citizen,

b. a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act who has been ordinarily resident in Canada for not more than one year after the time at which he or she first became eligible to apply for Canadian citizenship,

c. a Canadian government, whether federal, provincial or local, or an agency thereof, or

d. an entity that is Canadian-controlled, as determined under subsection 26(1) or (2) and in respect of which there has been no determination made under any of subsections 26(2.1), (2.11) and (2.31) or declaration made under subsection 26(2.2) or (2.32); (Canadien)

Canadian business: means a business carried on in Canada that has

a. a place of business in Canada,

b. an individual or individuals in Canada who are employed or self-employed in connection with the business, and

c. assets in Canada used in carrying on the business;

corporation: means a body corporate with or without share capital;

Director: means the Director of Investments appointed under section 6;

entity: means a corporation, partnership, trust or joint venture;

joint venture: means an association of two or more persons or entities, where the relationship among those associated persons or entities does not, under the laws in force in Canada, constitute a corporation, a partnership or a trust and where, in the case of an investment to which this Act applies, all the undivided ownership interests in the assets of the Canadian business or in the voting interests of the entity that is the subject of the investment are or will be owned by all the persons or entities that are so associated;

Minister: means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;

new Canadian business: in relation to a non-Canadian, means a business that is not already being carried on in Canada by the non-Canadian and that, at the time of its establishment,

- a. is unrelated to any other business being carried on in Canada by that non-Canadian, or
- b. is related to another business being carried on in Canada by that non-Canadian but falls within a prescribed specific type of business activity that, in the opinion of the Governor in Council, is related to Canada's cultural heritage or national identity; (nouvelle entreprise canadienne)

non-Canadian: means an individual, a government or an agency thereof or an entity that is not a Canadian;

own: means beneficially own;

person: means an individual, a government or an agency thereof or a corporation;

prescribed: means prescribed by the regulations made pursuant to this Act;

state-owned enterprise means;

- a. the government of a foreign state, whether federal, state or local, or an agency of such a government;
- b. an entity that is controlled or influenced, directly or indirectly, by a government or agency referred to in paragraph (a); or
- c. an individual who is acting under the direction of a government or agency referred to in paragraph (a) or who is acting under the influence, directly or indirectly, of such a government or agency; (entreprise d'État)

voting group: means two or more persons who are associated with respect to the exercise of rights attached to voting interests in an entity by contract, business arrangement, personal relationship, common control in fact through the ownership of voting interests, or otherwise, in such a manner that they would ordinarily be expected to act together on a continuing basis with respect to the exercise of those rights; (groupement de votants)

voting interest, with respect to;

- a. a corporation with share capital, means a voting share,

b. a corporation without share capital, means an ownership interest in the assets thereof that entitles the owner to rights similar to those enjoyed by the owner of a voting share, and

c. a partnership, trust or joint venture, means an ownership interest in the assets thereof that entitles the owner to receive a share of the profits and to share in the assets on dissolution;

voting share: means a share in the capital of a corporation to which is attached a voting right ordinarily exercisable at meetings of shareholders of the corporation and to which is ordinarily attached a right to receive a share of the profits, or to share in the assets of the corporation on dissolution, or both. (

## **Part I. Organization and mandate**

### **Minister**

#### **4. Role of minister**

The Minister is responsible for the administration of this Act.

#### **5. Duties and powers of Minister**

1) The Minister shall;

(a) to (e) [Repealed, 1995, c. 1, s. 47]

f. ensure that the notification and review of investments are carried out in accordance with this Act; and

g. perform all other duties required by this Act to be performed by the Minister.

#### **Other powers**

2) In exercising the Minister's powers and performing his duties under this Act, the Minister.

a. shall, where appropriate, make use of the services and facilities of other departments, branches or agencies of the Government of Canada;

b. may, with the approval of the Governor in Council, enter into agreements, for the purposes of this Act, with the government of any province or any agency thereof, or with any other entity or person, and may make disbursements up to an amount equal to the aggregate of the amounts to be contributed by all parties to the agreement, even before those amounts have been contributed; and

c. may consult with, and organize conferences of, representatives of industry and labour, provincial and local authorities and other interested persons.

### **Director of Investments**

#### **6. Director of Investments**

The Minister may appoint an officer, to be known as the Director of Investments, to advise and assist the Minister in exercising the Minister's powers and performing the Minister's duties under this Act.

## Part II. Exemptions

### 10. Exempt transactions

- 1) This Act, other than Part IV.1, does not apply in respect of:
  - a. the acquisition of voting shares or other voting interests by any person in the ordinary course of that person's business as a trader or dealer in securities;
  - b. the acquisition of voting interests by any person in the ordinary course of a business carried on by that person that consists of providing, in Canada, venture capital on terms and conditions not inconsistent with such terms and conditions as may be fixed by the Minister;
  - c. the acquisition of control of a Canadian business in connection with the realization of security granted for a loan or other financial assistance and not for any purpose related to the provisions of this Act, if the acquisition is subject to approval under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act or the Trust and Loan Companies Act;
  - d. the acquisition of control of a Canadian business for the purpose of facilitating its financing and not for any purpose related to the provisions of this Act on the condition that the acquirer divest himself of control within two years after it is acquired or within such longer period as is approved by the Minister;
  - e. the acquisition of control of a Canadian business by reason of an amalgamation, a merger, a consolidation or a corporate reorganization following which the ultimate direct or indirect control in fact of the Canadian business, through the ownership of voting interests, remains unchanged;
  - f. the acquisition of control of a Canadian business carried on by an agent of Her Majesty in right of Canada or a province or by a Crown corporation within the meaning of the Financial Administration Act;
  - g. the acquisition of control of a Canadian business carried on by a corporation the taxable income of which is exempt from tax under Part I of the Income Tax Act by virtue of paragraph 149(1)(d) of that Act;
  - h. any transaction to which Part XII.01 of the Bank Act applies;
  - i. the involuntary acquisition of control of a Canadian business on the devolution of an estate or by operation of law;
  - j. the acquisition of control of a Canadian business by
    - (i) an insurance company incorporated in Canada that is a company or a provincial company to which the Insurance Companies Act applies, on the condition that the gross investment revenue of the company from the Canadian business is included in computing the income of the company under subsection 138(9) of the Income Tax Act,

(ii) a foreign entity that has been approved by order of the Superintendent of Financial Institutions under Part XIII of the Insurance Companies Act to insure in Canada risks, on the condition that the gross investment revenue of the company from the Canadian business is included in computing the income of the company under subsection 138(9) of the Income Tax Act and the voting interests of the entity carrying on the Canadian business, or the assets used in carrying on the Canadian business, are vested in trust under that Part, or

(iii) a corporation incorporated in Canada, all the issued voting shares of which, other than the qualifying voting shares of directors, are owned by an insurance company described in subparagraph (i), a foreign entity described in subparagraph (ii) or by a corporation controlled directly or indirectly through the ownership of voting shares by such an insurance company or foreign entity, on the condition that, in the case of a foreign entity described in subparagraph (ii), the voting interests of the entity carrying on the Canadian business, or the assets used in carrying on the Canadian business, are vested in trust under Part XIII of the Insurance Companies Act; and

k. the acquisition of control of a Canadian business the revenue of which is generated from farming carried out on the real property acquired in the same transaction.

#### **Exempt transactions - Part IV**

1) Part IV does not apply in respect of the acquisition of control of a Canadian business in connection with the realization of security granted for a loan or other financial assistance and not for any purpose related to the provisions of this Act, if the acquisition is not subject to approval under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act or the Trust and Loan Companies Act.

#### **Exempt transactions - Part IV.1**

2) Part IV.1 does not apply in respect of;

a. the acquisition of control of a Canadian business in connection with the realization of security granted for a loan or other financial assistance and not for any purpose related to the provisions of this Act, if the acquisition is subject to approval under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act or the Trust and Loan Companies Act;

b. the acquisition of control of a Canadian business by reason of an amalgamation, a merger, a consolidation or a corporate reorganization following which the ultimate direct or indirect control in fact of the Canadian business, through the ownership of voting interests, remains unchanged, if the acquisition is subject to approval under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act or the Trust and Loan Companies Act;

c. the acquisition of control of a Canadian business carried on by an agent of Her Majesty in right of Canada or a province or by a Crown corporation within the meaning of the Financial Administration Act;

d. any transaction to which Part XII.01 of the Bank Act applies; or

e. the acquisition of control of a Canadian business by any of the following entities, if the acquisition is subject to approval under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act or the Trust and Loan Companies Act:

(i) an insurance company incorporated in Canada that is a company or a provincial company to which the Insurance Companies Act applies, on the condition that the gross investment revenue of the company from the Canadian business is included in computing the income of the company under subsection 138(9) of the Income Tax Act,

(ii) a foreign entity that has been approved by order of the Superintendent of Financial Institutions under Part XIII of the Insurance Companies Act to insure in Canada risks, on the condition that the gross investment revenue of the company from the Canadian business is included in computing the income of the company under subsection 138(9) of the Income Tax Act and the voting interests of the entity carrying on the Canadian business, or the assets used in carrying on the Canadian business, are vested in trust under that Part, or

(iii) a corporation incorporated in Canada, all the issued voting shares of which, other than the qualifying voting shares of directors, are owned by an insurance company described in subparagraph (i), by a foreign entity described in subparagraph (ii) or by a corporation controlled directly or indirectly through the ownership of voting shares by such an insurance company or foreign entity, on the condition that, in the case of a foreign entity described in subparagraph (ii), the voting interests of the entity carrying on the Canadian business, or the assets used in carrying on the Canadian business, are vested in trust under Part XIII of the Insurance Companies Act.

**If condition not complied with**

3) If any condition referred to in paragraph (1)(d) or (j) or (2)(e) is not complied with, the exemption under that paragraph does not apply and the transaction referred to in that paragraph is subject to this Act as if it had never been exempt.

## **Part III. Notification**

### **11. Investments subject to notification**

The following investments by non-Canadians are subject to notification under this Part:

- a. an investment to establish a new Canadian business; and
- b. an investment to acquire control of a Canadian business in any manner described in subsection 28(1), unless the investment is reviewable pursuant to section 14.

### **12. Notice of investment**

Where an investment is subject to notification under this Part, the non-Canadian making the investment shall, at any time prior to the implementation of the investment or within thirty days thereafter, in the manner prescribed, give notice of the investment to the Director providing such information as is prescribed.

### **13. Receipt**

1) Where a notice given under section 12 provides all the required information or reasons for the inability to provide any part of the required information, or where the notice is completed pursuant to subsection (2), the Director shall forthwith send a receipt to the non-Canadian that gave the notice



a. certifying the date on which

(i) the complete notice given under section 12 was received by the Director, or

(ii) the information required to complete the notice was received by the Director pursuant to subsection 2); and

b. advising the non-Canadian that

(i) the investment is not reviewable, or

(ii) unless the Director sends the non-Canadian a notice for review pursuant to section 15 within twenty-one days after the certified date referred to in paragraph (a), the investment is not reviewable.

#### **Incomplete notice**

2) Where a notice given under section 12 is incomplete, the Director shall forthwith send a notice to the non-Canadian that gave the notice under that section, specifying the information required to complete the notice under section 12 and requesting that the information be provided to the Director in order to complete that notice.

#### **Where investment not reviewable**

3) An investment in respect of which a receipt is sent under subsection (1) is not reviewable if

a. the information provided by the non-Canadian and relied on by the Director in sending the receipt is accurate; and

b. in a case where the receipt contains the advice referred to in subparagraph (1)(b)(ii), no notice for review is sent to the non-Canadian pursuant to section 15 within twenty-one days after the certified date referred to in paragraph (1)(a).

## **Part IV. Review**

### **14. Reviewable investments**

1) The following investments by non-Canadians are reviewable under this Part:

a. an investment to acquire control of a Canadian business in any manner described in paragraph 28(1)(a), (b) or (c), where the limits set out in subsection (3) apply;

b. an investment to acquire control of a Canadian business in the manner described in subparagraph 28(1)(d)(i), where the limits set out in subsection (3) apply;

c. an investment to acquire control of a Canadian business in the manner described in subparagraph 28(1)(d)(ii), where the circumstances described in subsection (2) and the limits set out in subsection (3) apply; and

d. an investment to acquire control of a Canadian business in the manner described in subparagraph 28(1)(d)(ii), where the circumstances described in subsection (2) do not apply and the limits set out in subsection (4) apply.

#### **Circumstances**

2) The circumstances referred to in paragraphs (1)(c) and (d) are that the value, calculated in the manner prescribed, of the assets of the entity carrying on the Canadian business, and of all other entities in Canada, the control of which is acquired, directly or indirectly, amounts to more than fifty per cent of the value, calculated in the manner prescribed, of the assets of all entities the control of which is acquired, directly or indirectly, in the transaction of which the acquisition of control of the Canadian business forms a part.

#### **Limits**

3) An investment described in paragraph (1)(a), (b) or (c) is reviewable under this Part where the value, calculated in the manner prescribed, of

a. the assets acquired, in the case where control of a Canadian business is acquired in the manner described in paragraph 28(1)(c), or

b. the assets of the entity carrying on the Canadian business, and of all other entities in Canada, the control of which is acquired, directly or indirectly, in the case where control of a Canadian business is acquired in the manner described in paragraph 28(1)(a), (b) or (d),  
is five million dollars or more.

#### **Limits**

4) An investment described in paragraph (1)(d) is reviewable under this Part where the value, calculated in the manner prescribed, of the assets of the entity carrying on the Canadian business, and of all other entities in Canada, the control of which is acquired, directly or indirectly, is fifty million dollars or more.

14.01 and 14.02 [Repealed, 1994, c. 47, s. 132]

14.03 [Repealed, 1994, c. 47, s. 133]

#### **14. 1. Limits for WTO investors**

1) Despite the limits set out in subsection 14(3), but subject to subsection (1.1), an investment described in paragraph 14(1)(a) or (b) by a WTO investor or — if the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, controlled by a WTO investor — by a non-Canadian, other than a WTO investor, is reviewable under section 14 only if the enterprise value, calculated in the manner prescribed, of the assets described in paragraph 14(3)(a) or (b), as the case may be, is equal to or greater than,

(a) to (c) [Repealed, 2017, c. 20, s. 192]

d. for an investment implemented at any time in the period that begins on the day on which this paragraph comes into force and that ends on December 31 of the following year, \$1,000,000,000; and

e. for an investment implemented at any time in the year that begins after the period referred to in paragraph (d), or in any subsequent year, the amount determined under subsection (2).

#### **Limits for WTO investors that are state-owned enterprises**

1.1) Despite the limits set out in subsection 14(3), an investment described in paragraph 14(1)(a) or (b) by a WTO investor that is a state-owned enterprise or — if the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, controlled by a WTO investor — by a state-owned enterprise, other than a WTO investor, is reviewable under section 14 only if the value calculated in the manner prescribed, of the assets described in paragraph 14(3)(a) or (b), as the case may be, is equal to or greater than the applicable amount determined under subsection (2).

#### **Amount**

2) The amount for any year for the purposes of paragraph (1)(e) and subsection (1.1) shall be determined by the Minister in January of that year by rounding off to the nearest million dollars the amount arrived at by using the following formula:

$(\text{Current Nominal GDP at Market Prices} / \text{Previous Year Nominal}) \times \text{amount determined for previous year}$

Where:

“Current Nominal GDP at Market Prices”: means the average of the Nominal Gross Domestic Products at market prices for the most recent four consecutive quarters; and

“Previous Year Nominal GDP at Market Prices”: means the average of the Nominal Gross Domestic Products at market prices for the four consecutive quarters for the comparable period in the year

#### **Publication in Canada Gazette**

3) As soon as possible after determining the amount for any particular year, the Minister shall publish the amount in the Canada Gazette.

#### **Investments not reviewable**

4) Despite paragraphs 14(1)(c) and (d), an investment described in either paragraph that is implemented after this subsection comes into force is not reviewable under section 14 if it is made by

a. a WTO investor; or

b. a non-Canadian, other than a WTO investor, if the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, controlled by a WTO investor.

#### **Exception**

5) This section does not apply in respect of an investment to acquire control of a Canadian business that is a cultural business.

#### **Definitions**

6) In this section and section 14.2,

controlled by a WTO investor:, with respect to a Canadian business, means, notwithstanding subsection 28(2),

(a) the ultimate direct or indirect control in fact of the Canadian business by a WTO investor through the ownership of voting interests, or

(b) the ownership by a WTO investor of all or substantially all of the assets used in carrying on the Canadian business

cultural business: means a Canadian business that carries on any of the following activities, namely,

- a. the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form, other than the sole activity of printing or typesetting of books, magazines, periodicals or newspapers,
- b. the production, distribution, sale or exhibition of film or video recordings,
- c. the production, distribution, sale or exhibition of audio or video music recordings,
- d. the publication, distribution or sale of music in print or machine readable form, or
- e. radio communication in which the transmissions are intended for direct reception by the general public, any radio, television and cable television broadcasting undertakings and any satellite programming and broadcast network services

financial institution[Repealed, 2009, c. 2, s. 448]

financial service[Repealed, 2009, c. 2, s. 448]

WTO Agreement: has the meaning given to the word "Agreement" by subsection 2(1) of the World Trade Organization Agreement Implementation Act.

WTO investor means;

- a. an individual, other than a Canadian, who is a national of a WTO Member or who has the right of permanent residence in relation to that WTO Member,
- b. a government of a WTO Member, whether federal, state or local, or an agency thereof,
- c. an entity that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1) or (2), and that is a WTO investor-controlled entity, as determined in accordance with subsection (7),
- d. a corporation or limited partnership
  - (i) that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1),
  - (ii) that is not a WTO investor within the meaning of paragraph (c),
  - (iii) of which less than a majority of its voting interests are owned by WTO investors,
  - (iv) that is not controlled in fact through the ownership of its voting interests, and
  - (v) of which two thirds of the members of its board of directors, or of which two thirds of its general partners, as the case may be, are any combination of Canadians and WTO investors,
- e. a trust
  - (i) that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1) or (2),
  - (ii) that is not a WTO investor within the meaning of paragraph (c),
  - (iii) that is not controlled in fact through the ownership of its voting interests, and

(iv) of which two thirds of its trustees are any combination of Canadians and WTO investors, or

f. any other form of business organization specified by the regulations that is controlled by a WTO investor; (investisseur OMC)

WTO Member means a Member of the World Trade Organization established by Article I of the WTO Agreement. (membre de l'OMC)

#### **Interpretation**

7) For the purposes only of determining whether an entity is a "WTO investor-controlled entity" under paragraph (c) of the definition WTO investor in subsection (6),

a. subsections 26(1) and (2) and section 27 apply and, for that purpose,

(i) every reference in those provisions to "Canadian" or "Canadians" shall be read and construed as a reference to "WTO investor" or "WTO investors", respectively,

(ii) every reference in those provisions to "non-Canadian" or "non-Canadians" shall be read and construed as a reference to "non-Canadian, other than a WTO investor," or "non-Canadians, other than WTO investors," respectively, except for the reference to "non-Canadians" in subparagraph 27(d)(ii), which shall be read and construed as a reference to "not WTO investors",

(iii) every reference in those provisions to "Canadian-controlled" shall be read and construed as a reference to "WTO investor-controlled", and

(iv) the reference in subparagraph 27(d)(i) to "Canada" shall be read and construed as a reference to "a WTO Member"; and

b. where two persons, one being a Canadian and the other being a WTO investor, own equally all of the voting shares of a corporation, the corporation is deemed to be WTO investor-controlled.

#### **14.11 Limits for trade agreement investors — paragraph 14(1)(a) or (b)**

1) Despite the limits set out in subsections 14(3) and 14.1(1), an investment described in paragraph 14(1)(a) or (b) by a trade agreement investor, other than a state-owned enterprise, or — if the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, controlled by a trade agreement investor — by a non-Canadian other than a trade agreement investor and other than a state-owned enterprise, is reviewable under section 14 only if the enterprise value, calculated in the prescribed manner, of the assets described in paragraph 14(3)(a) or (b), as the case may be, is equal to or greater than

(a) for an investment implemented at any time in the period that begins on the day on which this paragraph comes into force and that ends on December 31 of the following calendar year, \$1,500,000,000, and

(b) for an investment implemented in any subsequent calendar year, the amount determined in respect of that calendar year under subsection (3).

#### **Limits for trade agreement investors — paragraph 14(1)(c) or (d)**

2) Despite the limits set out in subsections 14(3) and (4), an investment described in paragraph 14(1)(c) or (d) by an investor described in any of the following paragraphs is reviewable under section 14 only if the enterprise value, calculated in the prescribed manner, of the assets described in paragraph 14(3)(b) or subsection 14(4), as the case may be, is equal to or greater than the applicable amount referred to under paragraph (1)(a) or (b):

(a) a trade agreement investor that is neither a WTO investor as defined in subsection 14.1(6) nor a state-owned enterprise; or

(b) a non-Canadian that is not a trade agreement investor, a WTO investor as defined in subsection 14.1(6) or a state-owned enterprise, if the Canadian business that is the subject of the investment is, immediately prior to the implementation of the investment, controlled by a trade agreement investor.

#### **Amount**

3) The amount for any year for the purposes of paragraph (1)(b) shall be determined by the Minister in January of that year by rounding off to the nearest million dollars the amount arrived at by using the following formula:

$(\text{Current Nominal GDP at Market Prices} / \text{Previous Year Nominal GDP at Market Prices}) \times$   
amount determined for previous year

where

(a) the Current Nominal GDP at Market Prices is the average of the Nominal Gross Domestic Products at market prices for the most recent four consecutive quarters; and

(b) the Previous Year Nominal GDP at Market Prices is the average of the Nominal Gross Domestic Products at market prices for the four consecutive quarters for the comparable period in the year preceding the year used in calculating the Current Nominal GDP at Market Prices.

#### **Publication in Canada Gazette**

4) As soon as possible after determining the amount for any particular year, the Minister shall publish the amount in the Canada Gazette.

#### **Exception**

(5) This section does not apply in respect of an investment to acquire control of a Canadian business that is a cultural business, as defined in subsection 14.1(6).

#### **Definitions**

6) The following definitions apply in this section.

controlled by a trade agreement investor, with respect to a Canadian business, means, despite subsection 28(2),

(a) the ultimate direct or indirect control in fact of the Canadian business by a trade agreement investor through the ownership of voting interests; or

(b) the ownership by a trade agreement investor of all or substantially all of the assets used in carrying on the Canadian business. (sous le contrôle d'un investisseur (traité commercial))

trade agreement country means a country other than Canada that is a party either to the Agreement described in subparagraph (a)(i) of the definition trade agreement investor in this subsection or to a trade agreement listed in column 1 of the schedule. (pays (traité commercial))

trade agreement investor means

(a) an individual, other than a Canadian, who is

(i) a natural person within the meaning of Article 8.1 of the Agreement as defined in section 2 of the Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act, or

(ii) a national within the meaning of any provision set out in column 2 of the schedule corresponding to a trade agreement set out in column 1;

(b) the government of a trade agreement country, whether federal, state or local, or an agency of such a government;

(c) an entity that is not a Canadian-controlled entity, as determined under subsection 26(1) or (2), and that is a trade agreement investor-controlled entity, as determined in accordance with subsection (7);

(d) a corporation or limited partnership that meets the following criteria:

(i) it is not a Canadian-controlled entity, as determined under subsection 26(1),

(ii) it is not an entity described in paragraph (c),

(iii) less than a majority of its voting interests are owned by trade agreement investors,

(iv) it is not controlled in fact through the ownership of its voting interests, and

(v) two thirds of the members of its board of directors, or two thirds of its general partners, as the case may be, are any combination of Canadians and trade agreement investors;

(e) a trust that meets the following criteria:

(i) it is not a Canadian-controlled entity, as determined under subsection 26(1) or (2),

(ii) it is not an entity described in paragraph (c),

(iii) it is not controlled in fact through the ownership of its voting interests, and

(iv) two thirds of its trustees are any combination of Canadians and trade agreement investors; or

(f) any other form of business organization specified by the regulations that is controlled by a trade agreement investor. (investisseur (traité commercial))

### **Interpretation**

(7) For the purpose only of determining whether an entity is a trade agreement investor-controlled entity under paragraph (c) of the definition trade agreement investor in subsection (6),

(a) subsections 26(1) and (2) and section 27 apply and, for that purpose,

- (i) every reference in those provisions to “Canadian” or “Canadians” shall be read and construed as a reference to “trade agreement investor” or “trade agreement investors”, respectively,
  - (ii) every reference in those provisions to “non-Canadian” or “non-Canadians” shall be read and construed as a reference to “non-Canadian other than a trade agreement investor,” or “non-Canadians, other than trade agreement investors,” respectively, except for the reference to “non-Canadians” in subparagraph 27(d)(ii), which shall be read and construed as a reference to “not trade agreement investors”,
  - (iii) every reference in those provisions to “Canadian-controlled” shall be read and construed as a reference to “trade agreement investor-controlled”, and
  - (iv) the reference in subparagraph 27(d)(i) to “Canada” shall be read and construed as a reference to “a trade agreement country”; and
- (b) if two persons, one being a Canadian and the other being a trade agreement investor, own equally all of the voting shares of a corporation, the corporation is deemed to be trade agreement investor-controlled.

#### **14.2 Regulations**

The Governor in Council may make any regulations that the Governor in Council considers necessary for carrying out the purposes and provisions of section 14.1. and 14.11.

#### **14.3 Order**

The Governor in Council may, by order, amend the schedule by adding, deleting or replacing the name of a trade agreement in column 1 or a corresponding provision setting out the meaning of national in column 2.

#### **15. Other reviewable investments**

An investment subject to notification under Part III that would not otherwise be reviewable is reviewable under this Part if

a. it falls within a prescribed specific type of business activity that, in the opinion of the Governor in Council, is related to Canada’s cultural heritage or national identity; and

b. within twenty-one days after the certified date referred to in paragraph 13(1)(a)

(i) the Governor in Council, where the Governor in Council considers it in the public interest on the recommendation of the Minister, issues an order for the review of the investment, and

(ii) the Director sends the non-Canadian making the investment a notice for review.

#### **16. Prohibition**

(1) A non-Canadian shall not implement an investment reviewable under this Part unless the investment has been reviewed under this Part and the Minister is satisfied or is deemed to be satisfied that the investment is likely to be of net benefit to Canada.

#### **Exceptions**



(2) Subsection (1) does not apply

a) where the Minister has sent a notice to a non-Canadian making an investment to the effect that the Minister is satisfied that a delay in implementing the investment would result in undue hardship to the non-Canadian or would jeopardize the operations of the Canadian business that is the subject of the investment;

b) to an investment made through an acquisition referred to in subparagraph 28(1)(d)(ii); or

c) to an investment reviewable pursuant to section 15.

#### **Request for notice**

3) If a non-Canadian makes a written request to the Minister for a notice referred to in paragraph (2)(a), the Minister shall, within 30 days after receiving all the information required for the Minister to decide whether the conditions described in that paragraph exist, advise the non-Canadian whether he or she will issue the notice or not.

#### **17. Application**

1) Where an investment is reviewable under this Part, the non-Canadian making the investment shall, in the manner prescribed, file an application with the Director containing such information as is prescribed.

#### **When application must be filed**

2) The application required by subsection (1) shall be filed;

a. subject to paragraph (b), in the case of an investment reviewable pursuant to section 14, at any time prior to the implementation of the investment;

b. in the case of an investment made through an acquisition referred to in subparagraph 28(1)(d)(ii) or an investment with respect to which a notice referred to in paragraph 16(2)(a) has been sent, at any time prior to the implementation of the investment or within thirty days thereafter; or

c. in the case of an investment reviewable pursuant to section 15, forthwith on receipt of a notice for review referred to in subparagraph 15(b)(ii).

#### **Additional information**

3) The non-Canadian making the investment shall, within the time specified by the Director, provide any other information that the Director considers necessary.

#### **18. Receipt**

1) Where an application filed under section 17 contains all the required information or reasons for the inability to provide any part of the information, or where the application is completed pursuant to subsection (2) or is deemed to be complete pursuant to subsection (3), the Director shall forthwith send a receipt to the applicant, certifying the date on which;

a. the complete application filed under section 17 was received by the Director;

b. the information required to complete the application was received by the Director pursuant to subsection (2); or

c. the application was deemed to be complete pursuant to subsection (3).

#### **Incomplete application**

2) Where an application filed under section 17 is incomplete, the Director shall send a notice to the applicant specifying the information required to complete the application and requesting that that information be provided to the Director in order to complete the application.

#### **Where application deemed complete**

3) Where the Director does not, within fifteen days after an application under section 17 has been received by the Director, send a receipt under subsection (1) or a notice under subsection (2), the application is deemed to be complete as of the date the application was received by the Director.

#### **19. Matters to be referred to Minister**

1) The Director shall refer to the Minister, for the purposes of section 21, any of the following material received by the Director in the course of the review of an investment under this Part:

- a. the information contained in the application filed under section 17 and any other information submitted by the applicant;
- b. any information submitted to the Director by the person or entity from whom or which control of the Canadian business is being or has been acquired;
- c. any written undertakings to Her Majesty in right of Canada given by the applicant; and
- d. any representations submitted to the Director by a province that is likely to be significantly affected by the investment.

#### **Security**

2) Her Majesty in right of Canada may accept any security for payment in respect of any penalty that may be imposed under paragraph 40(2)(d).

#### **20. Factors**

For the purposes of section 21, the factors to be taken into account, where relevant, are;

- a. the effect of the investment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada and on exports from Canada;
- b. the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada of which the Canadian business or new Canadian business forms or would form a part;
- c. the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
- d. the effect of the investment on competition within any industry or industries in Canada;

- e. the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and
- f. the contribution of the investment to Canada's ability to compete in world markets.

## **21. Net benefit**

1) Subject to subsections (2) to (8) and sections 22 and 23, the Minister shall, within 45 days after the certified date referred to in subsection 18(1), send a notice to the applicant that the Minister, having taken into account any information, undertakings and representations referred to the Minister by the Director under section 19 and the relevant factors set out in section 20, is satisfied that the investment is likely to be of net benefit to Canada.

### **Extension**

2) Subject to subsection (3), if, before the end of the 45-day period referred to in subsection (1), a notice is sent under subsection 25.2(1) in respect of the investment, the period during which the Minister may send the notice referred to in subsection (1) expires 30 days after the end of the prescribed period referred to in subsection 25.3(1) or at the end of any further period that the Minister and the applicant agree on.

### **Extension**

3) Subject to subsections (4) and (5), if, before the end of the 45-day period referred to in subsection (1), a notice is sent under subsection 25.2(1) in respect of the investment and if, in respect of the investment, an order is made under subsection 25.3(1), the period during which the Minister may send the notice referred to in subsection (1) expires;

a. 30 days after the end of

(i) the prescribed period referred to in subsection 25.3(6) or (7), as the case may be, or

(ii) the further period, if one was agreed on under subsection 25.3(7); or

b) at the end of any further period that the Minister and the applicant agree on.

### **Extension**

4) If, before the end of the 45-day period referred to in subsection (1), a notice is sent under subsection 25.2(1) in respect of the investment and if, in respect of the investment, an order is made under subsection 25.3(1) and a notice under paragraph 25.3(6)(b) is sent, the period during which the Minister may send the notice referred to in subsection (1) expires 30 days after the day on which the notice under that paragraph was sent or at the end of any further period that the Minister and the applicant agree on.

### **Extension**

5) If, before the end of the 45-day period referred to in subsection (1), a notice is sent under subsection 25.2(1) in respect of the investment and if an order is made under subsection 25.3(1) in respect of the investment and the Minister refers the investment to the Governor in Council under paragraph 25.3(6)(a) or subsection 25.3(7), the period during which the Minister may send the notice referred to in subsection (1) expires either 30 days after the earlier of the following days or at the end of any further period that the Minister and the applicant agree on:

- a. the day on which the Governor in Council takes any measure under subsection 25.4(1) in respect of the investment, and
- b. the day on which the prescribed period referred to in subsection 25.4(1) ends.

**Extension**

6) Subject to subsections (7) and (8), if, before the end of the 45-day period referred to in subsection (1), an order is made under subsection 25.3(1) in respect of the investment, the period during which the Minister may send the notice referred to in subsection (1) expires;

a. 30 days after the end of

(i) the prescribed period referred to in subsection 25.3(6) or (7), as the case may be, or

(ii) the further period, if one was agreed on under subsection 25.3(7); or

(b) at the end of any further period that the Minister and the applicant agree on.

**Extension**

7) If, before the end of the 45-day period referred to in subsection (1), an order is made under subsection 25.3(1) in respect of the investment and if, in respect of the investment, a notice is sent under paragraph 25.3(6)(b), the period during which the Minister may send the notice referred to in subsection (1) expires 30 days after the day on which the notice under that paragraph was sent or at the end of any further period that the Minister and the applicant agree on.

**Extension**

8) If, before the end of the 45-day period referred to in subsection (1), an order is made under subsection 25.3(1) in respect of the investment and if the Minister refers the investment to the Governor in Council under paragraph 25.3(6)(a) or subsection 25.3(7), the period during which the Minister may send the notice referred to in subsection (1) expires either 30 days after the earlier of the following days or at the end of any further period that the Minister and the applicant agree on:

a. the day on which the Governor in Council takes any measure under subsection 25.4(1) in respect of the investment, and

b. the day on which the prescribed period referred to in subsection 25.4(1) ends.

**Minister deemed to be satisfied**

9) Subject to sections 22 and 23, if the Minister does not send a notice under subsection (1) within the 45-day period referred to in that subsection or, if any of subsections (2) to (8) apply, within the 30-day period or agreed further period referred to in the applicable subsection, the Minister is deemed to be satisfied that the investment is likely to be of net benefit to Canada and shall send a notice to that effect to the applicant.

**22. Extension**

1) If none of subsections 21(2) to (8) apply and the Minister is unable to complete the consideration of an investment within the 45-day period referred to in subsection 21(1), the Minister shall, within that period, send a notice to that effect to the applicant and the Minister shall, subject to subsection (3) within 30 days from the date of the sending of the notice or within any further period that may be agreed on by the applicant and the Minister, complete the consideration of the investment.

#### **Notice**

2) Subject to subsection (3), if, within the 30-day period referred to in subsection (1) or any further period that is agreed on under that subsection, the Minister is satisfied that the investment is likely to be of net benefit to Canada, the Minister shall, within that period, send a notice to that effect to the applicant.

#### **Extension**

3) Subsections 21(2) to (8) apply to this section as though the 45-day period referred to in those subsections were the 30-day period referred to in subsection (1) or the further period as is agreed on under that subsection.

#### **Minister deemed to be satisfied**

4) Subject to section 23, if the Minister does not send a notice under subsection (2) within the period referred to in that subsection or, if subsection (3) applies, within the 30-day period or agreed further period referred to in whichever of subsections 21(2) to (8) applies to this section by reason of subsection (3), then the Minister is deemed to be satisfied that the investment is likely to be of net benefit to Canada and shall send a notice to that effect to the applicant.

### **23. Notice of right to make representations and submit undertakings**

1) If the Minister is not satisfied, within the period provided for in section 21 or 22 to send the notice referred to in subsection 21(1), that an investment is likely to be of net benefit to Canada, the Minister shall send a notice to that effect to the applicant, advising the applicant of their right to make representations and submit undertakings within 30 days from the date of the notice or within any further period that may be agreed on by the applicant and the Minister.

#### **Representations and undertakings**

2) If, after receipt of the notice referred to in subsection (1), the applicant advises the Minister that the applicant wishes to make representations or submit undertakings, the Minister shall afford the applicant a reasonable opportunity, within the 30-day period referred to in subsection (1), or within any agreed to further period, to make representations, in person or by a representative, and to give undertakings to Her Majesty in right of Canada, as the applicant sees fit.

#### **Net benefit**

3) Within a reasonable time after the expiry of the period for making representations and submitting undertakings, the Minister shall, in the light of any such representations and undertakings and having regard to the matters to be taken into account under subsection 21(1), send a notice to the applicant;

a. that the Minister is satisfied that the investment is likely to be of net benefit to Canada; or

b. confirming that the Minister is not satisfied that the investment is likely to be of net benefit to Canada.

### **23.1. Reasons**

The Minister shall provide reasons for any decision made under paragraph 23(3)(b) and the Minister may provide reasons for any decision made under subsection 21(1) or 22(2) or paragraph 23(3)(a).

### **24. Divestiture**

1) On receipt of a notice under paragraph 23(3)(b), the applicant shall not implement the investment to which the notice relates or, if the investment has been implemented, shall divest himself of control of the Canadian business that is the subject of the investment.

(1.1) to (1.3) [Repealed, 1994, c. 47, s. 134]

#### **Authority to purchase cultural business**

2) Notwithstanding section 90 of the Financial Administration Act, where a NAFTA investor is, pursuant to a review under this Part, required to divest control of a cultural business, as defined in subsection 14.1(6), that has been acquired in the manner described in subparagraph 28(1)(d)(ii), where the circumstances described in subsection 14(2) do not apply, Her Majesty in right of Canada may acquire all or part of the cultural business and dispose of all or any part of the cultural business so acquired.

#### **Designation of agent**

(3) For the purposes of subsection (2), the Governor in Council may, on the recommendation of the Minister and the Treasury Board, by order, designate any Minister of the Crown in right of Canada, or any Crown corporation within the meaning of the Financial Administration Act, to act as agent on behalf of Her Majesty with full authority to do all things necessary, subject to such terms and conditions not inconsistent with the obligations of the parties to the NAFTA Agreement under Article 2106 of the Agreement, as the Governor in Council considers appropriate.

#### **Definitions**

4) In this section,

controlled by a NAFTA investor, with respect to a Canadian business, means, notwithstanding subsection 28(2);

a. the ultimate direct or indirect control in fact of the Canadian business by a NAFTA investor through the ownership of voting interests, or

b. the ownership by a NAFTA investor of all or substantially all of the assets used in carrying on the Canadian business;

NAFTA Agreement has the meaning given to the word "Agreement" by the North American Free Trade Agreement Implementation Act;

NAFTA country means a country that is a party to the NAFTA Agreement;

NAFTA investor means;

- a. an individual, other than a Canadian, who is a national as defined in Article 201 of the NAFTA Agreement,
- b. a government of a NAFTA country, whether federal, state or local, or an agency thereof,
- c. an entity that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1) or (2), and that is a NAFTA investor-controlled entity, as determined in accordance with subsection (5),
- d. a corporation or limited partnership
  - (i) that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1),
  - (ii) that is not a NAFTA investor within the meaning of paragraph (c),
  - (iii) of which less than a majority of its voting interests are owned by NAFTA investors,
  - (iv) that is not controlled in fact through the ownership of its voting interests, and
  - (v) of which two thirds of the members of its board of directors, or of which two thirds of its general partners, as the case may be, are any combination of Canadians and NAFTA investors,
- e. a trust
  - (i) that is not a Canadian-controlled entity, as determined pursuant to subsection 26(1) or (2),
  - (ii) that is not a NAFTA investor within the meaning of paragraph (c),
  - (iii) that is not controlled in fact through the ownership of its voting interests, and
  - (iv) of which two thirds of its trustees are any combination of Canadians and NAFTA investors, or
- f. any other form of business organization specified by the regulations that is controlled by a NAFTA investor. (

**Interpretation**

- 5) For the purposes only of determining whether an entity is a NAFTA investor-controlled entity under paragraph (c) of the definition NAFTA investor in subsection (4);
- a. subsections 26(1) and (2) and section 27 apply and, for that purpose;
    - (i) every reference in those provisions to “Canadian” or “Canadians” shall be read and construed as a reference to “NAFTA investor” or “NAFTA investors”, respectively,
    - (ii) every reference in those provisions to “non-Canadian” or “non-Canadians” shall be read and construed as a reference to “non-Canadian, other than a NAFTA investor,” or “non-Canadians, other than NAFTA investors,” respectively, except for the reference to “non-Canadians” in subparagraph 27(d)(ii), which shall be read and construed as a reference to “not NAFTA investors”,
    - (iii) every reference in those provisions to “Canadian-controlled” shall be read and construed as a reference to “NAFTA investor-controlled”, and
    - (iv) the reference in subparagraph 27(d)(i) to “Canada” shall be read and construed as a reference to “a NAFTA country”; and

b. where two persons, one being a Canadian and the other being a NAFTA investor, own equally all of the voting shares of a corporation, the corporation is deemed to be NAFTA investor-controlled.

## **25. Information for monitoring**

A non-Canadian that implements an investment in accordance with this Part shall submit such information in his possession relating to the investment as is required from time to time by the Director in order to permit the Director to determine whether the investment is being carried out in accordance with the application filed under section 17 and any representations made or undertakings given in relation to the investment.

# **Part IV.1. Investments injurious to national security**

## **25.1 Application**

This Part applies in respect of an investment, implemented or proposed, by a non-Canadian;

- a. to establish a new Canadian business;
- b. to acquire control of a Canadian business in any manner described in subsection 28(1); or
- c. to acquire, in whole or in part, or to establish an entity carrying on all or any part of its operations in Canada if the entity has
  - (i) a place of operations in Canada,
  - (ii) an individual or individuals in Canada who are employed or self-employed in connection with the entity's operations, or
  - (iii) assets in Canada used in carrying on the entity's operations.

## **25.2. Notice**

1) If the Minister has reasonable grounds to believe that an investment by a non-Canadian could be injurious to national security, the Minister may, within the prescribed period, send to the non-Canadian a notice that an order for the review of the investment may be made under subsection 25.3(1).

### **Condition for investment**

- 2) If a non-Canadian has not implemented a proposed investment when they receive a notice under subsection (1), they shall not implement the investment unless they receive;
- a. a notice under paragraph (4)(a) indicating that no order for the review of the investment will be made under subsection 25.3(1);
  - b. a notice under paragraph 25.3(6)(b) indicating that no further action will be taken in respect of the investment; or
  - c. a copy of an order made under section 25.4 authorizing the investment to be implemented.

### **Requirement to provide information**



3) The Minister may require the non-Canadian or any person or entity from which the Canadian business or the entity referred to in paragraph 25.1(c) is being acquired to provide, within the time and in the manner specified by the Minister, any prescribed information or any other information that the Minister considers necessary for the purposes of determining whether there are reasonable grounds to believe that an investment by a non-Canadian could be injurious to national security.

**Ministerial action**

4) The Minister shall send to the non-Canadian;

a. a notice, which shall be sent within the prescribed period, indicating that no order for the review of the investment will be made under subsection 25.3(1); or

b. a notice referred to in subsection 25.3(2) indicating that an order for the review of the investment has been made.

**25.3. Reviewable investments**

1) An investment is reviewable under this Part if the Minister, after consultation with the Minister of Public Safety and Emergency Preparedness, considers that the investment could be injurious to national security and the Governor in Council, on the recommendation of the Minister, makes an order within the prescribed period for the review of the investment.

**Notice**

2) The Minister shall, without delay after the order has been made, send to the non-Canadian making the investment and to any person or entity from which the Canadian business or the entity referred to in paragraph 25.1(c) is being acquired, a notice indicating that an order for the review of the investment has been made and advising them of their right to make representations to the Minister.

**Condition for investment**

3) If a non-Canadian has not implemented a proposed investment when they receive a notice under subsection (2), they shall not implement the investment unless they receive;

a. a notice under paragraph (6)(b) indicating that no further action will be taken in respect of the investment; or

b. a copy of an order made under section 25.4 authorizing the investment to be implemented.

**Representations**

4) If, after receipt of the notice referred to in subsection (2), the non-Canadian or other person or entity advises the Minister that they wish to make representations, the Minister shall afford them a reasonable opportunity to make representations in person or by a representative.

**Requirement to provide information**

5) The Minister may require the non-Canadian or other person or entity to provide, within the time and in the manner specified by the Minister, any prescribed information or any other information that the Minister considers necessary for the purposes of the review.

**Ministerial action**

6) After consultation with the Minister of Public Safety and Emergency Preparedness, the Minister shall, within the prescribed period;

a. refer the investment under review to the Governor in Council, together with a report of the Minister's findings and recommendations on the review, if

(i) the Minister is satisfied that the investment would be injurious to national security, or

(ii) on the basis of the information available, the Minister is not able to determine whether the investment would be injurious to national security; or

b. send to the non-Canadian a notice indicating that no further action will be taken in respect of the investment if the Minister is satisfied that the investment would not be injurious to national security.

#### **Extension**

7) If the Minister is unable to complete the consideration of an investment within the prescribed period referred to in subsection (6), the Minister shall, within that period, send a notice to that effect to the non-Canadian. The Minister then has until the end of the period prescribed for this subsection, or any further period that the Minister and the non-Canadian agree on, to take the applicable measures described in paragraph (6)(a) or (b).

#### **25. 4. Governor in Council's powers**

1) On the referral of an investment under paragraph 25.3(6)(a) or subsection 25.3(7), the Governor in Council may, by order, within the prescribed period, take any measures in respect of the investment that he or she considers advisable to protect national security, including;

a. directing the non-Canadian not to implement the investment;

b. authorizing the investment on condition that the non-Canadian

(i) give any written undertakings to Her Majesty in right of Canada relating to the investment that the Governor in Council considers necessary in the circumstances, or

(ii) implement the investment on the terms and conditions contained in the order; or

c. requiring the non-Canadian to divest themselves of control of the Canadian business or of their investment in the entity.

#### **Copy of order**

2) The Minister shall send a copy of the order to the non-Canadian or other person or entity to which it is directed without delay after it has been made.

#### **Requirement to comply with order**

3) The non-Canadian or other person or entity to which the order is directed shall comply with the order.

#### **Statutory Instruments act does not apply**

4) The Statutory Instruments Act does not apply in respect of the order.

#### **25.5. Information for determination**

Non-Canadians or other persons or entities that are subject to an order made under section 25.4 shall submit any information in their possession relating to the investment that is required from time to time by the Director in order to permit the Director to determine whether they are complying with the order.

#### **25.6. Decisions and orders are final**

Decisions and orders of the Governor in Council, and decisions of the Minister, under this Part are final and binding and, except for judicial review under the Federal Courts Act, are not subject to appeal or to review by any court.

## **Part V. Rules and presumptions**

### **Canadian status rules**

#### **26. Rules respecting control of entities**

- 1) Subject to subsections (2.1) to (2.2), (2.31) and (2.32), for the purposes of this Act;
  - a. where one Canadian or two or more members of a voting group who are Canadians own a majority of the voting interests of an entity, it is a Canadian-controlled entity;
  - b. where paragraph (a) does not apply and one non-Canadian or two or more members of a voting group who are non-Canadians own a majority of the voting interests of an entity, it is not a Canadian-controlled entity;
  - c. where paragraphs (a) and (b) do not apply and a majority of the voting interests of an entity are owned by Canadians and it can be established that the entity is not controlled in fact through the ownership of its voting interests by one non-Canadian or by a voting group in which a member or members who are non-Canadians own one-half or more of those voting interests of the entity owned by the voting group, it is a Canadian-controlled entity; and
  - d. where paragraphs (a) to (c) do not apply and less than a majority of the voting interests of an entity are owned by Canadians, it is presumed not to be a Canadian-controlled entity unless the contrary can be established by showing that;
    - (i) the entity is controlled in fact through the ownership of its voting interests by one Canadian or by a voting group in which a member or members who are Canadians own a majority of those voting interests of the entity owned by the voting group, or
    - (ii) in the case of an entity that is a corporation or limited partnership, the entity is not controlled in fact through the ownership of its voting interests and two-thirds of the members of its board of directors or, in the case of a limited partnership, two-thirds of its general partners, are Canadians.

#### **Trusts**

- 2) Subject to subsections (2.1) to (2.2), (2.31) and (2.32), if it can be established that a trust is not controlled in fact through the ownership of its voting interests, subsection (1) does not apply, and the trust is a Canadian-controlled entity if two-thirds of its trustees are Canadians.

#### **Minister may determine**

(2.1) Where an entity that carries on or proposes to carry on a specific type of business activity that is prescribed for the purposes of paragraph 15(a) qualifies as a Canadian-controlled entity by virtue of subsection (1) or (2), the Minister may nevertheless determine that the entity is not a Canadian-controlled entity where, after considering any information and evidence submitted by or on behalf of the entity or otherwise made available to the Minister or the Director, the Minister is satisfied that the entity is controlled in fact by one or more non-Canadians.

**Minister may determine**

(2.11) For the purposes of Part IV.1, in the case of an entity that qualifies as a Canadian-controlled entity by virtue of subsection (1) or (2), the Minister may nevertheless determine that the entity is not a Canadian-controlled entity if, after considering any information and evidence submitted by or on behalf of the entity or otherwise made available to the Minister or the Director, the Minister is satisfied that the entity is controlled in fact by one or more non-Canadians.

**Minister may declare**

(2.2) If an entity referred to in subsection (2.1) or (2.11) has refused or neglected to provide, within a reasonable time, information that the Minister or the Director has requested and that the Minister considers necessary in order to make a decision under that subsection, the Minister may declare that the entity is not a Canadian-controlled entity.

**Retroactivity possible**

(2.3) A determination made under subsection (2.1) or a declaration made under subsection (2.2) may be retroactive to such date, not earlier than June 19, 1992, as the Minister specifies, in which case the determination or declaration shall, for all purposes of this Act, be deemed to have been made on the date so specified.

**Minister may determine — control by state-owned enterprise**

(2.31) If an entity qualifies as a Canadian-controlled entity by virtue of subsection (1) or (2), the Minister may nevertheless determine that the entity is not a Canadian-controlled entity if, after considering any information and evidence submitted by or on behalf of the entity or otherwise made available to the Minister or the Director, the Minister is satisfied that the entity is controlled in fact by one or more state-owned enterprises.

**Minister may declare**

(2.32) If an entity referred to in subsection (2.31) has refused or neglected to provide, within a reasonable time, information that the Minister or the Director has requested and that the Minister considers necessary in order to make a decision under that subsection, the Minister may declare that the entity is not a Canadian-controlled entity.

**Retroactivity possible**

(2.33) A determination made under subsection (2.31) or a declaration made under subsection (2.32) in respect of an entity referred to in subsection (2.31) may be retroactive to any date, not earlier than April 29, 2013, that the Minister specifies, in which case the determination or declaration shall, for all purposes of this Act, be deemed to have been made on the specified date.

**Entity to be informed**

(2.4) The Minister shall inform the entity concerned, in writing, of any determination made under any of subsections (2.1), (2.11) and (2.31) or declaration made under subsection (2.2) or (2.32), and of any date specified under subsection (2.3) or (2.33), without delay after the determination or declaration is made.

#### **Where corporation deemed to be Canadian**

3) Where, after considering any information and evidence submitted by or on behalf of a corporation incorporated in Canada the voting shares of which are publicly traded in the open market, the Minister is satisfied that, with respect to the corporation;

a. the majority of its voting shares are owned by Canadians;

b. four-fifths of the members of its board of directors are Canadian citizens ordinarily resident in Canada;

c. its chief executive officer and three of its four most highly remunerated officers are Canadian citizens ordinarily resident in Canada;

d. its principal place of business is located in Canada;

e. its board of directors supervises the management of its business and affairs on an autonomous basis without direction from any shareholder other than through the normal exercise of voting rights at meetings of its shareholders, and

f. the circumstances described in paragraphs (a) to (e) have existed for not less than the twelve month period immediately preceding the submission of the information and evidence, the corporation shall be deemed to be a Canadian for the purpose of making any investment described in subsection 14(1), except an investment falling within a prescribed specific type of business activity that, in the opinion of the Governor in Council, is related to Canada's cultural heritage or national identity, and the Minister shall so notify the corporation.

#### **Exception**

(3.1) Subsection (3) does not apply to a corporation for the purposes of Part IV.1.

#### **Proof**

4) The Minister may accept, as proof of the circumstances described in paragraphs (3)(e) and (f), a written statement by the corporation to that effect, signed by all the members of its board of directors.

#### **Duration of presumption**

5) If the material facts submitted by or on behalf of the corporation are accurate, the presumption under subsection (3) applies, from the date of the notification by the Minister referred to in that subsection, for so long as those material facts remain substantially unchanged or for two years from the date of that notification, whichever period is shorter.

#### **Equal ownership**

6) Where two persons own equally all of the voting shares of a corporation and at least one of them is a non-Canadian, the corporation is not a Canadian-controlled entity.

### **27. Other rules**

For the purposes of section 26,

- a) where voting interests of an entity are owned by a partnership, a trust, other than a trust described in subsection 26(2), or a joint venture, those voting interests are deemed to be owned by the partners, beneficiaries or members of the joint venture, as the case may be, in the same proportion as their respective ownership interests in the assets of the partnership, trust or joint venture;
- b) a trust described in subsection 26(2) is deemed to be a person for the purposes of the definition voting group in section 3;
- c) any voting shares of a corporation that are issued to bearer are deemed to be owned by non-Canadians unless the contrary is established; and
- d) where voting interests of an entity are held by individuals each of whom holds not more than one per cent of the total number of voting interests of the entity, the Minister shall, in the absence of evidence to the contrary, accept as evidence that those voting interests are owned by individuals who are Canadians a statement purporting to be signed by a person duly authorized by the entity in that behalf indicating that
  - (i) according to the records of the entity, the individuals who hold those voting interests have addresses in Canada, and
  - (ii) the person purporting to have signed the statement has no knowledge or reason to believe that those voting interests are owned by individuals who are non-Canadians.

## **Acquisition of control rules**

### **28. Manner of acquiring control**

- 1) For the purposes of this Act, a non-Canadian acquires control of a Canadian business only by;
  - a. the acquisition of voting shares of a corporation incorporated in Canada carrying on the Canadian business;
  - b. the acquisition of voting interests of an entity that;
    - (i) is carrying on the Canadian business, or
    - (ii) controls, directly or indirectly, another entity carrying on the Canadian business, where there is no acquisition of control of any corporation;
  - c. the acquisition of all or substantially all of the assets used in carrying on the Canadian business; or
  - d. the acquisition of voting interests of an entity that controls, directly or indirectly, an entity in Canada carrying on the Canadian business, where
    - (i) there is no acquisition of control, directly or indirectly, of a corporation incorporated elsewhere than in Canada that controls, directly or indirectly, an entity in Canada carrying on the Canadian business, or
    - (ii) there is an acquisition of control described in subparagraph (i).

### **Rules and presumptions respecting control of entities**

- 2) Subject to subsections (4) to (5), (6.1) and (6.2), for the purposes of this Act,

- a. where one entity controls another entity, it is deemed to control indirectly any entity or entities controlled directly or indirectly by that other entity;
- b. an entity controls another entity directly
  - (i) where the controlling entity owns a majority of the voting interests of the other entity, or
  - (ii) where the other entity is a corporation and the controlling entity owns less than a majority of the voting shares of the corporation but controls the corporation in fact through the ownership of one-third or more of its voting shares;
- c. entities that are controlled, directly or indirectly, by the same entity are deemed to be associated with each other, with any other entities controlled by any one or combination of them and with the entity or entities that control them; and
- d. where entities that are associated pursuant to paragraph (c) own voting interests of the same entity, the associated entities may be treated as one entity for the purposes of establishing direct or indirect control of the entity in which they own voting interests.

**Presumptions respecting acquisition of control**

- 3) Subject to subsections (4) to (5), (6.1) and (6.2), for the purposes of this Act;
  - a. the acquisition of a majority of the voting interests of an entity or of a majority of the undivided ownership interests in the voting shares of an entity that is a corporation is deemed to be acquisition of control of that entity;
  - b. the acquisition of less than a majority of the voting interests of an entity other than a corporation is deemed not to be acquisition of control of that entity;
  - c. the acquisition of less than a majority but one-third or more of the voting shares of a corporation or of an equivalent undivided ownership interest in the voting shares of the corporation is presumed to be acquisition of control of that corporation unless it can be established that, on the acquisition, the corporation is not controlled in fact by the acquirer through the ownership of voting shares; and
  - d. the acquisition of less than one-third of the voting shares of a corporation or of an equivalent undivided ownership interest in the voting shares of the corporation is deemed not to be acquisition of control of that corporation.

**Minister may determine**

- 4) In the case of an entity that carries on or proposes to carry on a specific type of business activity that is prescribed for the purposes of paragraph 15(a), the Minister may, notwithstanding subsection (2) or (3), after considering any information and evidence submitted by or on behalf of the entity or otherwise made available to the Minister or the Director, determine that the entity is or is not controlled by another entity or that there has or has not been an acquisition of control of the entity, where the Minister is satisfied that the entity is or is not controlled in fact by that other entity or that there has or has not in fact been an acquisition of control of that entity, as the case may be.

**Minister may determine**

4.1) For the purposes of Part IV.1, the Minister may, after considering any information and evidence submitted by or on behalf of an entity or otherwise made available to the Minister or the Director, determine that the entity is or is not controlled by another entity or that there has or has not been an acquisition of control of the entity, if the Minister is satisfied that the entity is or is not controlled in fact by that other entity or that there has or has not in fact been an acquisition of control of that entity, as the case may be.

**Minister may declare**

5) If an entity referred to in subsection (4) or (4.1) has refused or neglected to provide, within a reasonable time, information that the Minister or the Director has requested and that the Minister considers necessary in order to make a decision under that subsection, the Minister may declare that the entity is or is not controlled by another entity or that there has or has not been an acquisition of control of the entity, as the case may be.

**Retroactivity possible**

6) A determination made under subsection (4) or a declaration made under subsection (5) may be retroactive to such date, not earlier than June 19, 1992, as the Minister specifies, in which case the determination or declaration shall, for all purposes of this Act, be deemed to have been made on the date so specified.

**Minister may determine — control or acquisition of control by state-owned enterprise**

6.1) The Minister may, after considering any information and evidence made available to the Minister or the Director, determine that an entity is or is not controlled by another entity, or that there has or has not been an acquisition of control of an entity, if the Minister is satisfied that the entity is or is not controlled in fact by a state-owned enterprise or that there has or has not been an acquisition of control in fact of that entity by a state-owned enterprise, as the case may be.

**Minister may declare — control or acquisition of control by state-owned enterprise**

6.2) If an entity or a state-owned enterprise has refused or neglected to provide, within a reasonable time, information that the Minister or the Director has requested and that the Minister considers necessary in order to make a decision under subsection (6.1), the Minister may declare that the entity is or is not controlled by a state-owned enterprise or that there has or has not been an acquisition of control of the entity by a state-owned enterprise, as the case may be.

**Retroactivity possible**

6.3) A determination made under subsection (6.1) or a declaration made under subsection (6.2) may be retroactive to any date, not earlier than April 29, 2013, that the Minister specifies, in which case the determination or declaration shall, for all purposes of this Act, be deemed to have been made on the specified date.

**Entity to be informed**

7) The Minister shall inform the entity concerned, in writing, of any determination made under any of subsections (4), (4.1) and (6.1) or declaration made under subsection (5) or (6.2) and of any date specified under subsection (6) or (6.3), without delay after the determination or declaration is made.

**29. Acquisition by more than one transaction or event**



1) For the purposes of this Act, the acquisition of anything includes any acquisition thereof that occurs as a result of more than one transaction or event, whether or not those transactions or events occur or have occurred as, or as a part of, a series of related transactions or events and, subject to any provision of this Act, whether or not one or more of those transactions or events occurred before the coming into force of this Act.

#### **Presumption**

2) For the purposes of subsection (1), where, as a result of more than one transaction or event, not one of which is an acquisition of control within the meaning of subsection 28(1), an entity carrying on a Canadian business is controlled in fact through the ownership of voting interests by a non-Canadian, that non-Canadian is deemed to have acquired control of the entity at the time and in the manner of the latest of those transactions or events.

#### **30. Contractual rights to acquire voting interests or assets**

1) For the purposes of this Act, a non-Canadian who has an absolute right under a written contract to acquire voting interests of an entity or to acquire any assets used in carrying on a business may, at the option of that non-Canadian, treat that right as if it had been exercised and as if that non-Canadian owned the voting interests or assets that are the subject of that right.

#### **Voting shares carrying more or less than a voting right**

2) For the purposes of this Act, where a voting share has attached to it more than a single voting right, or a fraction of a voting right, that voting share is deemed to be the number of voting shares, or the fraction of a voting share, that corresponds to the number of voting rights or fraction of a voting right that the voting share confers.

#### **31. Business partly in Canada**

1) A Canadian business shall be deemed to be carried on in Canada notwithstanding that it is carried on partly in Canada and partly in some other place.

#### **Part of a business**

2) A part of a business that is capable of being carried on as a separate business is a Canadian business if the business of which it is a part is a Canadian business.

## **Timing rules**

#### **32. New Canadian businesses**

1) The time at which a new Canadian business is established is the time at which it becomes a Canadian business.

#### **Investments**

2) The time at which an investment is implemented is the time at which the new Canadian business that is the subject of the investment is established or the time at which control of the Canadian business that is the subject of the investment is acquired.

## **Sending notices, receipts or demands**

### **33. Means of sending**

Where a notice, receipt or demand is required to be sent by the Minister or the Director under any provision of this Act, it shall be sent by personal delivery, registered mail, telecommunicated text or any other verifiable means of communication.

## **Operation of other Acts**

### **34. Operation of other Acts**

Nothing in or done under the authority of this Act affects the operation of any other Act of Parliament that applies to or in respect of any particular Canadian business or class of Canadian businesses, except as expressly provided in this Act.

## **Part VI. General**

### **Regulations**

#### **35. Regulations**

- 1) The Governor in Council may make regulations
  - a. prescribing anything that, pursuant to any provision of this Act, is to be prescribed; and
  - b. prescribing any other matter or thing necessary for carrying into effect the purposes and provisions of this Act.

#### **Prescribing periods**

1.1) Any regulations prescribing a period for the purposes of subsections 25.2(1) and 25.3(1) may provide for a separate period depending on whether it is in respect of an investment referred to in section 11 or 14 or any other investment and, for the purposes of subsection 25.3(1), depending on whether a notice has or has not been issued under subsection 25.2(1).

#### **Tabling regulations**

2) Any regulations made for the purposes of section 15 or the definition new Canadian business in section 3 that prescribe a specific type of business activity that, in the opinion of the Governor in Council, is related to Canada's cultural heritage or national identity shall be laid before each House of Parliament on any of the first five days on which that House is sitting after they are made and shall not come into force before sixty days after they are made.

#### **Referral to committee**

3) Any regulations laid before a House of Parliament pursuant to subsection (2) shall be referred to such standing or special committee of that House as may be established or designated for the purpose of studying matters to which the regulations relate.

#### **Exception**

4) Subsection (2) does not apply to any regulation referred to in that subsection that comes into force on the day this Act comes into force.

## **Privileged information**

### **36. Privileged information**

1) Subject to subsections (3) to (4), all information obtained with respect to a Canadian, a non-Canadian, a business or an entity referred to in paragraph 25.1(c) by the Minister or an officer or employee of Her Majesty in the course of the administration or enforcement of this Act is privileged and no one shall knowingly communicate or allow to be communicated any such information or allow anyone to inspect or to have access to any such information.

### **Evidentiary privilege**

2) Notwithstanding any other Act or law but subject to subsections (3) and (4), no minister of the Crown and no officer or employee of Her Majesty in right of Canada or a province shall be required, in connection with any legal proceedings, to give evidence relating to any information that is privileged under subsection (1) or to produce any statement or other writing containing such information.

### **Communication or disclosure of information**

3) Information that is privileged under subsection (1) may, on such terms and conditions and under such circumstances as the Minister deems appropriate;

a. on request in writing to the Director by or on behalf of the Canadian or non-Canadian to which the information relates, be communicated or disclosed to any person or authority named in the request; or

b. for any purpose relating to the administration or enforcement of this Act, be communicated or disclosed to a minister of the Crown in right of Canada or a province or to an officer or employee of Her Majesty in right of Canada or a province.

### **Investigative bodies**

3.1) Information that is privileged under subsection (1) may be communicated or disclosed by the Minister to a prescribed investigative body, or an investigative body of a prescribed class, if the communication or disclosure is for the purposes of the administration or enforcement of Part IV.1 and that body's lawful investigations. The information may also be communicated or disclosed by that body for the purposes of those investigations.

### **Exceptions**

4) Nothing in this section prohibits the communication or disclosure of;

a. information for the purposes of legal proceedings relating to the administration or enforcement of this Act;

b. information contained in any written undertaking given to Her Majesty in right of Canada relating to an investment that the Minister is satisfied or is deemed to be satisfied is likely to be of net benefit to Canada;

c. information to which the public has access;

d. information the communication or disclosure of which has been authorized in writing by the Canadian or the non-Canadian to which the information relates;

e. information contained in;

(i) any receipt sent pursuant to subsection 13(1) relating to an investment that is not reviewable pursuant to subsection 13(3),

(ii) any notice sent under subsection 21(1) or (9), 22(2) or (4), 23(1) or (3) or 25.2(1), paragraph 25.2(4)(a), subsection 25.3(2), paragraph 25.3(6)(b) or subsection 25.3(7), or

(iii) any demand sent by the Minister under section 39, other than a demand sent for the purposes of the administration or enforcement of Part IV.1;

(e.1) information contained in reasons given by the Minister for sending a notice under subsection 23(1);

(e.2) the fact that an order was made under subsection 25.4(1) and whether the order;

(i) directed the non-Canadian not to implement the investment that is the subject of the order,

(ii) authorized the investment, or

(iii) required the non-Canadian to divest themselves of control of the Canadian business, or of their investment in the entity, that is the subject of the order;

(e.3) any other information contained in an order made under subsection 25.4(1);

f. information to which a person is otherwise legally entitled;

g. information contained in reasons given by the Minister for any decision taken under subsection 21(1), 22(2) or 23(3); or

h. information relating to the acceptance of security under subsection 19(2).

**Information referred to in paragraph (4)(e.1), (g) or (h)**

4.1) The Minister shall inform the Canadian or non-Canadian before communicating or disclosing any financial, commercial, scientific or technical information under paragraph (4)(e.1), (g) or (h), and the Minister shall not communicate or disclose the information if they satisfy the Minister, without delay, that the communication or disclosure would prejudice them.

**Information referred to in paragraph (4)(e.3)**

4.11) The Minister shall inform the Canadian or non-Canadian before communicating or disclosing any information under paragraph (4)(e.3), and the Minister shall not communicate or disclose the information if they satisfy the Minister, without delay, that the communication or disclosure would prejudice them.

**Communication or disclosure — application**

4.2) Despite subsection (1), the Minister may communicate or disclose the fact that an application has been filed under this Act, other than Part IV.1, and at what point the investment to which the application relates is in the review process. The Minister shall inform the non-Canadian and, with their consent, the Canadian business before communicating or disclosing such information and the Minister shall not communicate or disclose the information if either of them satisfy the Minister, without delay, that the communication or disclosure would prejudice them.

#### **Non-disclosure**

5) No minister of the Crown and no officer or employee of Her Majesty in right of Canada or a province may be required, in connection with any legal proceedings or otherwise, to give evidence relating to or otherwise to communicate or disclose any information referred to in paragraph (4)(b) where, in the opinion of the Minister or a person designated by the Minister, the communication or disclosure of that information is not necessary for any purpose relating to the administration or enforcement of this Act and would prejudicially affect the non-Canadian that gave the written undertaking referred to in that paragraph in the conduct of the business affairs of that non-Canadian.

## **Written Opinions**

### **37. Ministerial opinions**

1) If any question arises under this Act as to whether an individual or entity that proposes to establish, or to acquire control of, a Canadian business that carries on a specific type of business activity referred to in paragraph 15(a) is a Canadian, the Minister shall, on application by or on behalf of the individual or entity consider the application and any information and evidence submitted in connection with the application and, unless the Minister concludes that the submitted information and evidence is not sufficient to enable the Minister to reach an opinion on the question, shall provide the applicant with a written opinion for the guidance of the applicant.

#### **Time for providing opinion**

1.1) The Minister shall provide his or her opinion no later than 45 days after the Minister concludes that the information and evidence he or she has received is sufficient to enable him or her to reach an opinion on the question.

#### **Other opinions**

2) Anyone may apply to the Minister, with supporting information, for an opinion on the applicability to them of any provision of this Act or the regulations to which subsection (1) does not apply, and the Minister may provide the applicant with a written opinion for the applicant's guidance. For greater certainty, the application may be in relation to any question that arises under this Act as to whether the applicant is a Canadian.

#### **Time for providing opinion**

2.1) If the Minister decides to provide an opinion under subsection (2), he or she shall provide it no later than 45 days after the Minister concludes that the information he or she has received is sufficient to enable him or her to reach an opinion on the question.

#### **Opinion binding**

3) If the material facts submitted by or on behalf of an applicant for an opinion are accurate, a written opinion provided under this section is binding on the Minister and the Director for so long as the material facts on which the opinion was based remain substantially unchanged.

#### **Authorized opinions**

4) The Minister may authorize the Director or any person the Minister deems qualified to provide written opinions under this section, and any opinion so provided has the same effect as if it had been provided under this section by the Minister.

## **Guidelines and Interpretation Notes**

### **38. Guidelines and Interpretation Notes**

The Minister may issue and publish, in such manner as the Minister deems appropriate, guidelines and interpretation notes with respect to the application and administration of any provision of this Act or the regulations.

## **Report**

### **38.1 Annual report**

The Director shall, for each fiscal year, submit a report on the administration of this Act to the Minister and the Minister shall make the report available to the public.

## **Part VII. Remedies, offences and punishment**

### **39. Ministerial demand**

- 1) Where the Minister believes that a non-Canadian, contrary to this Act;
  - a. has failed to give a notice under section 12 or file an application under section 17;
    - a.1. has failed to provide any prescribed information or any information that has been requested by the Minister or Director;
  - b. has implemented an investment the implementation of which is prohibited by section 16, 24, 25.2 or 25.3;
  - c. has implemented an investment on terms and conditions that vary materially from those contained in an application filed under section 17 or from any information or evidence provided under this Act in relation to the investment;
  - d. has failed to divest himself of control of a Canadian business as required by section 24;
    - d.1. has failed to comply with an undertaking given to Her Majesty in right of Canada in accordance with an order made under section 25.4;
    - d.2. has failed to comply with an order made under section 25.4;
  - e. has failed to comply with a written undertaking given to Her Majesty in right of Canada relating to an investment that the Minister is satisfied or is deemed to be satisfied is likely to be of net benefit to Canada;

- f. has failed to comply with any other provision of this Act or with the regulations, or
  - g. has entered into any transaction or arrangement primarily for a purpose related to this Act;
- the Minister may send a demand to the non-Canadian, requiring the non-Canadian, forthwith or within such period as is specified in the demand, to cease the contravention, to remedy the default, to show cause why there is no contravention of the Act or regulations or, in the case of undertakings, to justify any non-compliance therewith.

#### **Ministerial demand**

2) If the Minister believes that a person or an entity has, contrary to this Act, failed to comply with a requirement to provide information under subsection 25.2(3) or 25.3(5) or failed to comply with subsection 25.4(3), the Minister may send a demand to the person or entity requiring that they immediately, or within any period that may be specified in the demand, cease the contravention, remedy the default or show cause why there is no contravention of the Act.

#### **Contents of demand**

3) A demand under subsection (1) or (2) shall indicate the nature of the proceedings that may be taken under this Act against the non-Canadian or other person or entity to which it is sent in the event that the non-Canadian, person or entity fails to comply with the demand.

#### **39.1 New undertaking**

If the Minister believes that a non-Canadian has failed to comply with a written undertaking given to Her Majesty in right of Canada relating to an investment that the Minister is satisfied or is deemed to be satisfied is likely to be of net benefit to Canada, the Minister may, after the investment has been implemented, accept a new undertaking from the non-Canadian.

#### **40. Application for court order**

1) If a non-Canadian or any other person or entity fails to comply with a demand under section 39, an application on behalf of the Minister may be made to a superior court for an order under subsection (2) or (2.1).

#### **Court orders**

2) If, at the conclusion of the hearing on an application referred to in subsection (1), the superior court decides that the Minister was justified in sending a demand to the non-Canadian or other person or entity under section 39 and that the non-Canadian or other person or entity has failed to comply with the demand, the court may make any order or orders as, in its opinion, the circumstances require, including, without limiting the generality of the foregoing, an order

a. directing the non-Canadian to divest themselves of control of the Canadian business, or to divest themselves of their investment in the entity, on any terms and conditions that the court considers just and reasonable;

b. enjoining the non-Canadian from taking any action specified in the order in relation to the investment that might prejudice the ability of a superior court, on a subsequent application for an order under paragraph (a), to effectively accomplish the end of such an order;

- c. directing the non-Canadian to comply with a written undertaking given to Her Majesty in right of Canada in relation to an investment that the Minister is satisfied or is deemed to be satisfied is likely to be of net benefit to Canada;
- (c.1) directing the non-Canadian to comply with a written undertaking given to Her Majesty in right of Canada in accordance with an order made under section 25.4;
- d. against the non-Canadian imposing a penalty not exceeding ten thousand dollars for each day the non-Canadian is in contravention of this Act or any provision thereof;
- e. directing the revocation, or suspension for any period specified in the order, of any rights attached to any voting interests acquired by the non-Canadian or of any right to control any such rights;
- f. directing the disposition by any non-Canadian of any voting interests acquired by the non-Canadian or of any assets acquired by the non-Canadian that are or were used in carrying on a Canadian business; or
- g. directing the non-Canadian or other person or entity to provide information requested by the Minister or Director.

#### **Court orders — person or entity**

2.1) If, at the conclusion of the hearing on an application referred to in subsection (1), the superior court decides that the Minister was justified in sending a demand to a person or an entity under section 39 and that the person or entity has failed to comply with it, the court may make any order or orders that, in its opinion, the circumstances require, including, without limiting the generality of the foregoing, an order against the person or entity imposing a penalty not exceeding \$10,000 for each day on which the person or entity is in contravention of this Act or any of its provisions.

#### **Penalties recoverable as debts**

3) A penalty imposed by an order made under paragraph (2)(d) or subsection (2.1) is a debt due to Her Majesty in right of Canada and is recoverable as such in a superior court.

#### **Contempt of court**

4) Everyone who fails or refuses to comply with an order made by a superior court under subsection (2) or (2.1) that is directed to them may be cited and punished by the court that made the order, as for other contempts of that court.

#### **Rights of appeal**

5) For greater certainty, all rights of appeal provided by law apply in the case of any decision or order made by a superior court under this section, as in the case of other decisions or orders made by that court.

#### **Definition of superior court**

6) In this section, superior court has the same meaning as in subsection 35(1) of the Interpretation Act but does not include the Supreme Court of Canada, the Federal Court of Appeal or the Tax Court of Canada.

#### **41. Vesting orders**



1) Where any voting interests or assets in respect of which an order is made under paragraph 40(2)(f) are owned by a non-Canadian outside Canada and that non-Canadian fails to comply with the order within such reasonable time as is fixed by the court that made the order, the court may, by order, vest those voting interests or assets in a trustee named by it who may thereupon, notwithstanding any other Act or law, do all such things and execute all such documents as are necessary to give effect to the order of the court.

#### **Application of proceeds**

2) Any proceeds of the disposition of any voting interests or assets received by a trustee under subsection (1) shall first be applied to the payment of the trustee's fees and expenses in acting as trustee and thereafter any balance remaining shall be paid by the trustee to those who would, but for the vesting order, have been entitled to receive the proceeds.

#### **42. Summary conviction offences**

Every one who contravenes section 36 or who knowingly provides false or misleading information under this Act or the regulations is guilty of an offence punishable on summary conviction.

#### **43. Limitation period**

Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.

## **Part VIII**

[Repealed, 1995, c. 1, s. 49]

## **Part IX Transitional, Consequential Amendments and Commencement**

### **Transitional**

#### **45. Terms, conditions and undertakings**

1) All terms and conditions of, and all undertakings given in relation to, an investment that has been allowed under the Foreign Investment Review Act, chapter 46 of the Statutes of Canada, 1973-74, are enforceable under this Act as if the investment were subject to this Act.

#### **Legal proceedings under FIRA**

2) Any legal proceedings taken in respect of an investment under section 19, 20 or 21 of the Foreign Investment Review Act, chapter 46 of the Statutes of Canada, 1973-74, that are pending on the coming into force of this Act may be continued in respect of that investment under this Act.

#### **Legal proceedings under this Act**

3) Any legal proceedings may be taken under this Act in respect of an investment that has been the subject of any order or deemed allowance under section 12 or 13 of the Foreign Investment Review Act, chapter 46 of the Statutes of Canada, 1973-74.

#### **Privileged information**

4) All information that is privileged under section 14 of the Foreign Investment Review Act, chapter 46 of the Statutes of Canada, 1973-74, remains privileged under this Act, subject to the provisions of section 36 of this Act.

#### **Pending notices**

5) Where an investment, whether implemented or not, notice of which has been given under section 8 of the Foreign Investment Review Act, chapter 46 of the Statutes of Canada, 1973-74, has not, on the coming into force of this Act, been the subject of any order or deemed allowance under section 12 or 13 of the Foreign Investment Review Act, a complete notice under section 12 of this Act or a complete application under section 17 of this Act shall be deemed to have been received by the Director in respect of that investment on the day this Act came into force.

#### **Prior investments**

6) Where an investment to which the Foreign Investment Review Act, chapter 46 of the Statutes of Canada, 1973-74, applied has been implemented, and no notice has been given in respect of that investment under section 8 of that Act prior to the coming into force of this Act, that investment shall be deemed to have been implemented on the day this Act came into force.

#### **Prior opinions**

7) Where, on the coming into force of this Act, a person has a binding opinion furnished under section 4 of the Foreign Investment Review Act, chapter 46 of the Statutes of Canada, 1973-74, that the person is not a non-eligible person under that Act, that person is deemed to be a Canadian for so long as the material facts on which that opinion was based remain substantially unchanged or for two years from the date of the coming into force of this Act, whichever period is shorter.

[...]

#### **51. Coming into force**

This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

[Note: Act in force June 30, 1985, see SI/85-128]

SCHEDULE (Subsection 14.11(6) and section 14.3) in the original act.

\* \* \*