

Canada

An Act respecting investment in Canada (1985)

Note

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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An Act respecting investment in Canada

Short title

1. This Act may be cited as the Investment Canada Act.

Purpose of Act

2. 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. In this Act,

Agency [Repealed, 1995, c. 1, s. 45]

assets includes tangible and intangible property of any value; (actifs)

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

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; (entreprise canadienne)

corporation means a body corporate with or without share capital; (personne morale)

Director means the Director of Investments appointed under section 6; (directeur)

entity means a corporation, partnership, trust or joint venture; (unité)

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; (coentreprise)

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; (ministre)

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; (nonCanadien)

own means beneficially own; (propriétaire)

person means an individual, a government or an agency thereof or a corporation; (personne)

prescribed means prescribed by the regulations made pursuant to this Act; (Version anglaise seulement)

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; (intérêt avec droit de vote)

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. (action avec droit de vote)

PART I

Organization and Mandate

Role of Minister

4. The Minister is responsible for the administration of this Act.

R.S., 1985, c. 28 (1st Supp.), s. 4; 1995, c. 1, s. 46.

Duties and powers of Minister

5 (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

5 (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.

R.S., 1985, c. 28 (1st Supp.), s. 5; 1993, c. 35, s. 2; 1995, c. 1, s. 47.

Director of Investments

6. 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.

R.S., 1985, c. 28 (1st Supp.), s. 6; 1995, c. 1, s. 48.

7 to 9 [Repealed, 1995, c. 1, s. 48]

PART II

Exemptions

Exempt transactions

10 (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

Article 10 (1.1) is omitted [net-benefit review].

Exempt transactions — Part IV.1

10 (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

10 (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.

R.S., 1985, c. 28 (1st Supp.), s. 10; 1991, c. 46, s. 600, c. 47, s. 735; 2001, c. 9, s. 589; 2007, c. 6, s. 439; 2009, c. 2, s. 447; 2014, c. 39, s. 186.

PART III

Notification

Investments subject to notification

11. 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.

Notice of investment

12. 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.

R.S., 1985, c. 28 (1st Supp.), s. 12; 1995, c. 1, s. 50.

Receipt

13 (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 [net-benefit review]...

Incomplete notice

13 (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.

13 (3). ...

R.S., 1985, c. 28 (1st Supp.), s. 13; 1995, c. 1, s. 50; 2024, c. 4, s. 4.

PART IV

Review

Reviewable investments [Net-benefit]

Article 14 to 25 are omitted.

PART IV.1

Review of Investments —Injurious to National Security

Application

25.1 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.

2009, c. 2, s. 453.

Beginning of review

25.11 The review of an investment under this Part begins on the day on which it first comes to the attention of the Minister.

2024, c. 4, s. 13.

Requirement to provide information

25.12 The Minister may require the non-Canadian or other person or entity from which the Canadian business or the entity referred to in paragraph 25.1(c) is being acquired to provide to the Minister, 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.

2024, c. 4, s. 13.

Notice

25.2 (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

25.2 (2) If a non-Canadian has not implemented a proposed investment when they receive a notice

25.2 (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 subsection (4);

(b) a notice under paragraph 25.3(6)(b) or (c); or

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

25.2 (3) [Repealed, 2024, c. 4, s. 14]

Notice

25.2 (4) If the Minister, after the consultation referred to in subsection 25.3(1), does not consider that the investment could be injurious to national security, the Minister shall, within the prescribed period, send to the non-Canadian a notice indicating that consideration of the investment is complete and that no order will be made under that subsection.

2009, c. 2, s. 453; 2013, c. 33, s. 140; 2024, c. 4, s. 14.

Order — further review

25.3 (1) If the Minister, after consultation with the Minister of Public Safety and Emergency

Preparedness, considers that an investment could be injurious to national security, the Minister shall make an order within the prescribed period for the further review of the investment.

Interim conditions

25.3 (1.1) The Minister shall, by order, impose interim conditions in respect of the investment that are applicable until no later than when consideration of the investment is complete, or amend such conditions, if the Minister, after consultation with the Minister of Public Safety and Emergency Preparedness, is satisfied that it is necessary for the purpose of preventing injury to national security that could arise during that review, provided that the imposition of interim conditions does not introduce significant new risks of injury to national security. The Minister shall also delete a condition if the Minister, after such consultation, is satisfied that it is no longer necessary for that purpose.

Statutory Instruments Act does not apply

25.3 (1.2) The Statutory Instruments Act does not apply in respect of an order made under this section.

Notice

25.3 (2) The Minister shall, without delay after an order has been made under this section, 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 the order has been made and advising them of their right to make representations and to submit undertakings to the Minister. A copy of the order is to accompany the notice.

Condition for investment

25.3 (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) or (c);

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

Representations and undertakings

25.3 (4) After receipt of the notice referred to in subsection (2), the non-Canadian or other person or entity may make representations and submit written undertakings, within the time and in the manner specified in the notice.

25.3 (5) [Repealed, 2024, c. 4, s. 15]

Ministerial action

25.3 (6) The Minister shall, within the prescribed period,

(a) after consultation with the Minister of Public Safety and Emergency Preparedness, 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;

(b) after consultation with the Minister of Public Safety and Emergency Preparedness, send to the non-Canadian a notice indicating that consideration of the investment is complete, if the Minister is satisfied that the investment would not be injurious to national security; or

(c) send to the non-Canadian a notice indicating that consideration of the investment is complete, if the Minister is satisfied, with the concurrence of the Minister of Public Safety and Emergency Preparedness, that the investment would not be injurious to national security because of the undertakings that are given to His Majesty in right of Canada.

Extension

25.3 (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 (b)(a), (b) or (c).

2009, c. 2, s. 453; 2013, c. 33, s. 141; 2024, c. 4, s. 15.

New undertakings

25.31 After the Minister sends a notice referred to in paragraph 25.3(6)(c), the Minister may

- (a) accept new written undertakings if the Minister is satisfied, with the concurrence of the Minister of Public Safety and Emergency Preparedness, that the risks of injury to national security identified in the notice would continue to be addressed; or
- (b) release the non-Canadian or other person or entity from any undertakings, if the Minister is satisfied, with the concurrence of the Minister of Public Safety and Emergency Preparedness, that they are no longer necessary to address those risks.

2024, c. 4, s. 15.

Governor in Council's powers

25.4 (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 non-Canadian to make 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

25.4 (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

25.4 (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

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

2009, c. 2, s. 453; 2013, c. 33, s. 142; 2024, c. 4, s. 16.

Information to determine compliance

25.5 Non-Canadians or other persons or entities shall, within the time and in the manner specified by the Director, submit any information relating to the investment that is required by the Director in order to permit the Director to determine whether they are complying with

- (a) an order made under section 25.3 or 25.4; or
- (b) any written undertaking given to His Majesty in right of Canada and referred to in paragraph 25.3(6)(c) or 25.31(a).

2009, c. 2, s. 453; 2024, c. 4, s. 17.

Decisions and orders are final

25.6 Decisions and orders of the Governor in Council and of the Minister made 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.

2009, c. 2, s. 453; 2024, c. 4, s. 17.

Closed proceeding on judicial review

25.7 (1) The following provisions apply to the judicial review of a decision or order made under this Part:

- (a) [Repealed, 2024, c. 16, s. 109]
- (b) [Repealed, 2024, c. 16, s. 109]
- (c) [Repealed, 2024, c. 16, s. 109]
- (d) [Repealed, 2024, c. 16, s. 109]
- (e) [Repealed, 2024, c. 16, s. 109]
- (f) if the judge determines that evidence or other information provided by the Minister is not relevant or if the Minister withdraws the evidence or other information, the decision of the judge shall not be based on that evidence or other information and the judge must return it to the Minister; and
- (g) the judge shall ensure the confidentiality of all evidence and other information that the Minister withdraws.

Definition of judge

(2) In this section, judge means the Chief Justice of the Federal Court or a judge of that Court designated by the Chief Justice.

2024, c. 4, s. 17; 2024, c. 16, s. 109.

Protection of information on appeal

25.8 Section 25.7 applies to any appeal of a decision made under that section and to any further appeal, with any necessary modifications.

2024, c. 4, s. 17.

Notification

25.9 Within 30 days after sending a notice under paragraph 25.3(6)(c) or a copy of the order under subsection 25.4(2), the Minister shall notify the National Security and Intelligence Committee of Parliamentarians and the National Security and Intelligence Review Agency of

- (a) the fact that a notice was sent under paragraph 25.3(6)(c) and of the identity of the non-Canadian and the Canadian business or entity referred to in paragraph 25.1(c); or
- (b) the fact that an order was made under subsection 25.4(1), of the identity of the non-Canadian and the Canadian business or entity referred to in paragraph 25.1(c) that is the subject of the order, and of 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 contained terms and conditions, 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.

2024, c. 4, s. 17.

PART V

Rules and Presumptions

Canadian Status Rules

Rules respecting control of entities

26 (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 at least two-thirds of the members of its board of directors or, in the case of a limited partnership, at least two-thirds of its general partners, are Canadians.

Trusts

26 (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 at least two-thirds of its trustees are Canadians.

Minister may determine

Article 26 (2.1) is omitted [net-benefit review]

Minister may determine

26 (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

26 (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

26 (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 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

26 (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

26(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

26 (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

26 (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

26 (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) at least 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

26 (3.1) Subsection (3) does not apply to a corporation for the purposes of Part IV.1.

Proof

26 (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

26 (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

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

R.S., 1985, c. 28 (1st Supp.), s. 26; 1993, c. 35, s. 4; 1995, c. 1, s. 50; 2009, c. 2, s. 454; 2013, c. 33, s. 143; 2024, c. 4, s. 18.

Other rules

27 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
 - (i) 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

Manner of acquiring control

- 28 (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

- 28 (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

- 28(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

Article 28 (4) is omitted [net-benefit review]

Minister may determine

28 (4.1) For the purposes of Part IV.1, the Minister may, after consultation with the relevant

28 (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

28 (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

28 (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

28 (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

28 (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

28 (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

28 (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.

R.S., 1985, c. 28 (1st Supp.), s. 28; 1993, c. 35, s. 5; 1995, c. 1, s. 50; 2009, c. 2, s. 455; 2013, c. 33, s. 144.

Acquisition by more than one transaction or event

29 (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

29 (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.

Contractual rights to acquire voting interests or assets

30 (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

30 (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.

Business partly in Canada

31 (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

31 (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

New Canadian businesses

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

Investments

32 (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

Means of sending

33. 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.

R.S., 1985, c. 28 (1st Supp.), s. 33; 1995, c. 1, s. 50.

Operation of other Acts

34. 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 (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

35 (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

35 (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

35 (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

35 (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.

R.S., 1985, c. 28 (1st Supp.), s. 35; 2009, c. 2, s. 456.

Privileged information

36 (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

36 (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

36 (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 and foreign states

36 (3.1) Information that is privileged under subsection (1) may be communicated or disclosed

- (a) by the Minister to a prescribed investigative body, or an investigative body of a prescribed class, for the purposes of the administration and enforcement of Part IV.1 in the context of that body's lawful investigations;
- (b) by such an investigative body, for the purposes of its lawful investigations; and
- (c) by the Minister, on such terms and conditions that the Minister deems appropriate, to a government of a foreign state or an agency thereof that is responsible for the review of foreign investments, for the purpose of national security reviews of foreign investments.

Exceptions

36 (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), 25.2(1) or (4) or 25.3(2), paragraph 25.3(6)(b) or (c) 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, including if it did so on terms and conditions, 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)

36 (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.

For greater certainty

36(4.101) For greater certainty, when communicating or disclosing under paragraph (4)(e.2) the fact that an order was made under subsection 25.4(1), the Minister is not prohibited from communicating or disclosing the identity of the non-Canadian and of the Canadian business or entity referred to in paragraph 25.1(c) that is the subject of the order.

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

36 (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

Communication or disclosure – application

36 (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

36 (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.

R.S., 1985, c. 28 (1st Supp.), s. 36; 1995, c. 1, s. 50; 2009, c. 2, s. 457; 2012, c. 19, s. 480; 2014, c. 39, s. 187; 2024, c. 4, s. 19.

Written Opinions

Ministerial opinions

Article 37 (1) is omitted [net-benefit review].

Guidelines and interpretation notes

38. 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

Annual report

38.1 (1) 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.

Required information

38 (2) The report shall include information on the exercise of ministerial duties and powers under Part IV.1.

2009, c. 2, s. 459; 2017, c. 20, s. 193; 2024, c. 4, s. 19.1.

PART VII

Remedies, Offences and Punishment

Ministerial demand

39(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 a written undertaking given to His Majesty in right of Canada and referred to in paragraph 25.3(6)(c) or 25.31(a),

(d.2) has failed to comply with an order made under section 25.3 or 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

39 (2) The Minister may send a demand to a 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 if the Minister believes that the person or the entity has

cause why there is no contravention of the Act if the Minister believes that the person or the entity has failed to comply with

(a) a requirement to provide information under section 25.12 or 25.5;

(b) a written undertaking given to His Majesty in right of Canada and referred to in paragraph 25.3(6)(c) or 25.31(a); or

(c) an order made under section 25.3 or 25.4.

Contents of demand

39 (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.

R.S., 1985, c. 28 (1st Supp.), s. 39; 2009, c. 2, s. 460; 2024, c. 4, s. 20.

New undertaking

39.1 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.

2009, c. 2, s. 461.

Application for court order

40 (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

40 (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

40 (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 an order against the person or entity imposing a penalty not exceeding the greater of \$25,000 and any prescribed amount for each day of the contravention.

Penalties recoverable as debts

40 (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

40 (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

40 (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

40 (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.

R.S., 1985, c. 28 (1st Supp.), s. 40; 2002, c. 8, s. 152; 2009, c. 2, s. 462; 2024, c. 4, s. 21.

Vesting orders

41 (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

41 (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.

Summary conviction offences

42 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.

Limitation period

43 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

Terms, conditions and undertakings

45 (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

45 (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

45 (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

45 (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

45 (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

45 (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

45 (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 noneligible 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.

R.S., 1985, c. 28 (1st Supp.), s. 45; 1999, c. 31, s. 148.

Access to Information Act

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

46 [Amendment]

Bank Act

47 [Amendment]

Canadian Ownership and Control Determination Act

48 [Amendment]

Citizenship Act

49 [Amendment]

Northern Pipeline Act

50 [Amendments]

Commencement

Coming into force*

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

SCHEDULE

(Subsection 14.11(6) and section 14.3)

[net-benefit review] ...

RELATED PROVISIONS

— 2009, c. 2, s. 464

Transactions implemented during transitional period

464 An investment referred to in section 25.1 of the Investment Canada Act, as enacted by section 453, implemented within the period beginning on February 6, 2009 and ending on the day on which this Act receives royal assent, is subject to review under section 25.3 of that Act, as enacted by section 453, if the Minister of Industry sends a notice to the non-Canadian, within 60 days after the day on which this Act receives royal assent, indicating that the investment shall be subject to a review.

— 2013, c. 33, s. 149

Definitions

149 The following definitions apply in sections 150 to 153.]

the Act means the Investment Canada Act. (Loi)

transition period means the period beginning on April 29, 2013 and ending on the day on which sections 143 and 144 come into force. (période transitoire)

— 2013, c. 33, s. 150

Certain applications deemed never filed

150 Any application that is filed under section 17 of the Act before the day on which subsection 14.1(1) of the Act, as enacted by subsection 137(1), comes into force and in respect of which the Minister of Industry has not issued a decision before that day is deemed never to have been filed if

(a) the investment to which the application relates would be subject to subsection 14.1(1) of the Act, as enacted by subsection 137(1), had the application been made on that day; and

(b) the enterprise value of the assets to which the application relates is less than the amount referred to in paragraph 14.1(1)(a) of the Act, as enacted by subsection 137(1).

— 2013, c. 33, s. 151

Application of subsection 26(2.31)

151 (1) The Minister of Industry may make a determination under subsection 26(2.31) of the Act, as enacted by subsection 143(4), in respect of an entity that has implemented an investment during the transition period only if he or she has sent to the entity, within 60 days after the end of the transition period, a notice stating that he or she is undertaking an assessment of whether the entity was controlled in fact by one or more state-owned enterprises, as defined in section 3 of the Act, at the time the investment was implemented.

Application of subsection 26(2.32)

151 (2) For greater certainty, subsection 26(2.32) of the Act, as enacted by subsection 143(4), applies if the notice referred to in subsection (1) has been sent.

— 2013, c. 33, s. 152

Application of subsection 28(6.1)

Application of subsection 28(6.1)

152 (1) If an investment has been implemented during the transition period, the Minister of Industry may make a determination under subsection 28(6.1) of the Act, as enacted by subsection 144(4), in respect of an entity directly or indirectly involved in the investment only if he or she has sent to the entity, within 60 days after the end of the transition period, a notice stating that he or she is undertaking an assessment to determine whether the entity was controlled in fact by a state-owned enterprise, as defined in section 3 of the Act, at the time the investment was implemented, or whether there was an acquisition of control in fact of that entity by such a state-owned enterprise, as the case may be.

Application of subsection 28(6.2)

151 (2) For greater certainty, subsection 28(6.2) of the Act, as enacted by subsection 144(4), applies if the notice referred to in subsection (1) has been sent.

— 2013, c. 33, s. 153

Applications under section 37

153 Section 37 of the Act, as it read immediately before the day on which section 145 comes into force, continues to apply in respect of applications made under that section 37 before that day.

— 2017, c. 6, s. 117

Investment Canada Act — Section 14.11 [net-benefit review] ...

Application for review — subsection 14.1(1) [net-benefit review] ...

Investment Canada Act [net-benefit review] ...

Investment Canada Act [net-benefit review] ...

Review continued under new Act

22 (2) Subject to subsection (3), on or after the day on which section 15 comes into force, the review of any investment under Part IV.1 of the former Act in respect of which a measure has not been taken under subsection 25.3(6) of the former Act shall be taken up and continued in accordance with the new Act.

Subsections 25.3(2) and (6)

22 (3) If a notice has been sent under subsection 25.3(2) of the former Act in respect of the investment before the day on which section 15 comes into force,

(a) the Minister shall, without delay after that day, 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) of the new Act is being acquired, a notice referred to in subsection 25.3(2) of the new Act; and

(b) the prescribed period for the purposes of subsection 25.3(6) of the new Act is the period beginning on the day on which the order under subsection 25.3(1) of the former Act is made and ending 45 days after that day.

AMENDMENTS NOT IN FORCE

— 2024, c. 4, s. 2

2 (1) Section 11 of the Investment Canada Act is amended by striking out “and” at the end of paragraph (a), by adding “and” at the end of paragraph (b) and by adding the following after paragraph (b):

(c) an investment to acquire, in whole or in part, an entity carrying on all or any part of its operations in Canada and that has a place of operations in Canada, an individual or individuals in Canada who are employed or self-employed in connection with the entity’s operations or assets in Canada used in carrying on the entity’s operations, if

(i) the entity carries on a prescribed business activity,

(ii) the non-Canadian could, as a result of the investment, have access to, or direct the use of, material non-public technical information or material assets, and

(iii) the non-Canadian would have, as a result of the investment,

(A) the power to appoint or nominate any person who has the capacity to direct the business and affairs of the entity, such as a member of the board of directors or of senior management, a trustee of the entity or, in the case of a limited partnership, a general partner, or

(B) prescribed special rights with respect to the entity.

(2) Section 11 of the Act is renumbered as subsection 11(1) and is amended by adding the following:

Regulations

(2) The Governor in Council may make regulations defining “material assets” and “material non-public technical information” for the purposes of subparagraph (1)(c)(ii).

— 2024, c. 4, s. 3

1995, c. 1, par. 50(1)(a).

3 Section 12 of the Act is replaced by the following:

Notice of investment

12 (1) A non-Canadian making an investment shall, in the prescribed manner, give notice of the investment that includes prescribed information to the Director

(a) in the case of an investment referred to in paragraph 11(1)(b) in respect of a Canadian business

that carries on a prescribed business activity or an investment referred to in paragraph 11(1)(c), no later than the prescribed time prior to the implementation of the investment; and

(b) in the case of any other investment, within the prescribed period.

Condition for investment

(2) Subject to subsections 25.2(2) and 25.3(3), a non-Canadian who gives notice of an investment under paragraph (1)(a) shall not implement the investment unless the periods referred to in subsections 25.2(1) and 25.3(1) have expired.

— 2024, c. 4, s. 4 (2)

1995, c. 1, par. 50(1)(a).

4 (2) Subsection 13(2) of the Act is replaced by the following:

Incomplete notice

(2) If a notice given under section 12 is incomplete, the Director shall, within the prescribed period, send a notice to the non-Canadian, 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.

— 2024, c. 4, ss. 7 (1), (2)

7 (1) The portion of section 15 of the Act before paragraph (a) is replaced by the following:

[net-benefit review] ...

8 Paragraphs 17(2)(b) and (c) of the Act are replaced by the following:

[net-benefit review] ...

12 (1) Paragraph 25.1(b) of the Act is replaced by the following:

(b) to acquire control of a Canadian business in any manner described in section 28;

(b.1) if the non-Canadian is a state-owned enterprise, to acquire any of the assets of a Canadian business; or

(2) Section 25.1 of the Act is renumbered as subsection 25.1(1) and is amended by adding the following:

For greater certainty

(2) For greater certainty, paragraph (1)(c) includes an investment to acquire, in whole or in part, the assets of an entity referred to in that paragraph.

— 2024, c. 4, s. 14 (1)

2009, c. 2, s. 453.

14 (1) Subsection 25.2(1) of the Act is replaced by the following:

Notice

25.2 (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 further review of the investment may be made under subsection 25.3(1).

Act of corruption

(1.1) For the purposes of subsection (1), the fact that a non-Canadian has previously been convicted, within or outside Canada, for an offence involving an act of corruption constitutes, by itself, reasonable grounds.

— 2024, c. 4, ss. 20 (1), (2)

20 (1) Paragraph 39(1)(a) of the Act is replaced by the following:

(a) has failed to give notice in accordance with section 12 or file an application in accordance with section 17,

2009, c. 2, s. 460(1).

(2) Paragraph 39(1)(b) of the Act is replaced by the following:

(b) has implemented an investment the implementation of which is prohibited by section 12, 16, 24, 25.2 or

25.3,

— 2024, c. 4, ss. 21 (1), (2), (3)

2009, c. 2, s. 462(1).

21 (1) Subsection 40(1) of the Act is replaced by the following:

Application for court order

40 (1) An application on behalf of the Minister may be made to a superior court for an order under subsection (2) or (2.1) if

(a) a non-Canadian fails to give notice in accordance with paragraph 12(1)(a) or to file, with respect to a Canadian business that carries on a prescribed business activity, an application in accordance with section 17; or

(b) a non-Canadian or any other person or entity fails to comply with a demand under section 39.

2009, c. 2, s. 462(2).

(2) The portion of subsection 40(2) of the Act before paragraph (a) is replaced by the following:

(2) The portion of subsection 10(2) of the Act before paragraph (a) is replaced by the following:

Court orders

(2) If, at the conclusion of the hearing on an application referred to in subsection (1), the superior court decides that the non-Canadian has failed to give the notice or file the application referred to in paragraph (1)(a), or 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 that, in its opinion, the circumstances require, including an order

2009, c. 2, s. 462(4).

(2) Paragraphs 40(2)(c.1) and (d) of the Act are replaced by the following:

(c.1) directing the non-Canadian to comply with a written undertaking given to His Majesty in right of Canada and referred to in paragraph 25.3(6)(c) or 25.31(a);

(c.2) directing the non-Canadian to comply with an order made under section 25.3;

(d) against the non-Canadian imposing a penalty not exceeding

(i) in the case of a failure to give notice in accordance with paragraph 12(1)(a) or to file, with respect to a Canadian business that carries on a prescribed business activity, an application in accordance with section 17, the greater of \$500,000 and any prescribed amount, or

(ii) in the case of any other contravention of the provisions of this Act or the regulations, the greater of \$25,000 and any prescribed amount for each day of the contravention;