

THE INVESTMENT CANADA ACT of 1985

CHAPTER I-21.8

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

An Act respecting investment in Canada

1985, c. 20, assented to

20th June, 1985

SHORT TITLE

Short title

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

PURPOSE

Purpose of Act

2. Recognizing that increased capital and technology would benefit Canada, the purpose of this Act is to encourage investment in Canada by Canadians and non-Canadians that contributes to economic growth and employment opportunities and to provide for the review of significant investments in Canada by non-Canadians in order to ensure such benefit to Canada.

DEFINITIONS

Definitions

3. In this Act,

"Agency" [Repealed, 1995, c. 1, s. 45]

"assets"

«*actifs*»

"assets" includes tangible and intangible property of any value;

"business"

«*entreprise*»

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

"Canada"

«*Canada*»

"Canada" includes the territorial sea of Canada as determined in accordance with the *Territorial Sea and Fishing Zones Act*, the seabed and subsoil therebelow and all other areas beyond the territorial sea of Canada where Canada has or claims jurisdiction;

"Canadian"

«*Canadien*»

"Canadian" means

(a) a Canadian citizen,

(b) a permanent resident within the meaning of the *Immigration Act* who has been ordinarily resident in Canada for not more than one year after the time at which he 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 pursuant to subsection 26(1) or

(2) and in respect of which no determination or declaration has been made under subsection 26(2.1) or (2.2);

"Canadian business"

«*entreprise canadienne*»

"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"

«*personne morale*»

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

"Director"

« *directeur* »

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

"entity"

« *unit* »

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

"joint venture"

« *coentreprise* »

"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"

« *ministre* »

"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"

«*nouvelle entreprise canadienne*»

"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;

"non-Canadian"

«*non-Canadien*»

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

"own"

«*propri taire*»

"own" means beneficially own;

"person"

«*personne*»

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

"prescribed"

Version anglaise seulement

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

"voting group"

«*groupement de votants*»

"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;

"voting interest"

«*intérêt avec droit de vote*»

"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"

«*action 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.

R.S., 1985, c. 28 (1st Supp.), s. 3; 1993, c. 35, s. 1; 1995, c. 1, s. 45.

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.

21. (1) Subject to sections 22 and 23, the Minister shall, within forty-five 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 pursuant to 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

Where Minister deemed to be satisfied

(2) Subject to sections 22 and 23, where the Minister does not send a notice under subsection (1) within the forty-five day period referred to in that 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.

R.S., 1985, c. 28 (1st Supp.), s. 21; 1995, c. 1, s. 50.

PART V
RULES AND PRESUMPTIONS
Canadian Status Rules

Rules respecting control of entities

26. (1) Subject to subsections (2.1) and (2.2), 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) and (2.2), where 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 where 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 declare

(2.2) Where an entity referred to in subsection (2.1) 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 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.

Entity to be informed

(2.4) The Minister shall forthwith inform the entity concerned, in writing, of any determination made under subsection (2.1) or declaration made under subsection (2.2), and of any date specified under subsection (2.3).

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.

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.

R.S., 1985, c. 28 (1st Supp.), s. 26; 1993, c. 35, s. 4; 1995, c. 1, s. 50.

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

(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

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

(2) Subject to subsections (4) and (5), 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) and (5), 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 declare

(5) Where an entity referred to in subsection (4) 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.

Entity to be informed

(7) The Minister shall forthwith inform the entity concerned, in writing, of any determination made under subsection (4) or declaration made under subsection (5), and of any date specified under subsection (6).

R.S., 1985, c. 28 (1st Supp.), s. 28; 1993, c. 35, s. 5; 1995, c. 1, s. 50.