

# Investment Canada Regulations

## Chapter 3371

*Investment Canada Act*

Investment Canada Regulations (SOR/85-611)

### Regulations Respecting Investment in Canada

#### Short Title

1. These Regulations may be cited as the *Investment Canada Regulations*.

#### Interpretation

2. In these Regulations, "Act" means the *Investment Canada Act*;

"American" [Repealed, SOR/95-25, s. 1]

"controlled by a NAFTA investor" means controlled by a NAFTA investor as defined in subsection 24(4) of the Act; (sous le contrôle d'un investisseur ALÉNA)

"controlled by an American" [Repealed, SOR/95-25, s. 1]

"controlled by a WTO investor" means controlled by a WTO investor as defined in subsection 14.1(6) of the Act; (sous le contrôle d'un investisseur OMC)

"financial statements" means financial statements prepared in accordance with generally accepted accounting principles; (états financiers)

"investor" means a non-Canadian required to give notice of an investment under section 12 of the Act or a non-Canadian required to file an application for review of an investment under subsection 17(1) of the Act; (investisseurs)

"NAFTA investor" means a NAFTA investor as defined in subsection 24(4) of the Act; (investisseur ALÉNA)

"WTO investor" means a WTO investor as defined in subsection 14.1(6) of the Act. (investisseur OMC) SOR/89-69, s. 1; SOR/93-604, s. 2; SOR/95-25, s. 1.

2..01 [Repealed, SOR/95-25, s. 2]

2.1 For the purposes of paragraph (f) of the definition "NAFTA investor" in subsection 24(4) of the Act, the following forms of business organizations are, with respect to Mexico, specified:

(a) sociedad de responsabilidad limitada; and

(b) fide comiso. SOR/93-604, s. 1; SOR/95-25, s. 2.

2.2 For the purposes of paragraph 14.1(5)(c) of the Act, "transportation services" means a Canadian business directly or indirectly engaged in the carriage of passengers or goods from one place to another by any means, including, without limiting the generality of the foregoing, carriage by air, by rail, by water, by land and by pipeline. SOR/99-29, s.1

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### Value of Assets

3. [Repealed, SOR/95-25, s. 3]

3.1 (1) For the purposes of sections 14 and 14.1 of the Act, where only assets used in carrying on a Canadian business are acquired or where control only of an entity carrying on a Canadian business is acquired, the value of the assets shall be the aggregate of all assets acquired or of all assets of the entity, as shown in the audited financial statements for the entity carrying on the business for its fiscal year immediately preceding the implementation of the investment.

(2) For the purposes of sections 14 and 14.1 of the Act, where control of an entity carrying on a Canadian business and control of one or more other entities in Canada is acquired, directly or indirectly, the value of the assets shall be the aggregate of all assets shown in the audited financial statements consolidated for all the entities for their fiscal year immediately preceding the implementation of the investment.

(3) For the purposes of sections 14 and 14.1 of the Act, where control of a corporation incorporated elsewhere than in Canada that controls, directly or indirectly, an entity in Canada carrying on a Canadian business is acquired, directly or indirectly, the value of the assets of all entities, both inside and outside Canada, the control of which is acquired, directly or indirectly, shall be the aggregate of all assets shown in the audited financial statements consolidated for all the entities for their fiscal year immediately preceding the implementation of the investment.

(4) Where consolidated financial statements of entities referred to in subsection (2) or (3) are not available, the value of the assets for the purposes of sections 14 and 14.1 of the Act shall be the aggregate of the assets of all the entities as shown in the audited financial statements for each such entity for its fiscal year immediately preceding the implementation of the investment, excluding

(a) any amount shown to represent an ownership interest in any other entity the control of which is acquired, directly or indirectly; and

(b) any amount representing duplication arising from transactions between any entities the control of which is acquired, directly or indirectly.

(5) For the purposes of this section, where an individual or entity does not ordinarily prepare financial statements for audit or where financial statements for its fiscal year immediately preceding the implementation of the investment have not been audited, unaudited statements may be used.

(6) Where the first fiscal year of an entity has not been completed immediately preceding the implementation of the investment, a reference in this section to fiscal year shall mean the fiscal period that ends immediately preceding the implementation.

(7) The value of the assets calculated under this section shall be expressed in Canadian dollars. SOR/93-604, s. 4; SOR/95-25, s. 4.

### Signing Authority

4. Where a notice or application is required under section 12 or 17 of the Act, it shall be signed by the investor or by a person authorized to bind the investor for all purposes of the notice or application.

### Notification

5. A notice required to be given by an investor under section 12 of the Act shall be in writing, shall contain the information prescribed in Schedule I and shall be sent to the office of the Director of Investments.

### Application for Review

6. An application required to be filed by an investor under subsection 17(1) of the Act shall be in writing, shall
- (a) where the application relates to an investment that is reviewable under section 14 of the Act, contain the information prescribed in Schedule II, or
  - (b) where the application relates to an investment that is reviewable under section 15 of the Act, contain the information prescribed in Schedule III, and shall be sent to the Director of Investments.

### **Information Respecting a Canadian Business**

7. Where control of an entity carrying on a Canadian business and control of one or more other entities in Canada is acquired, directly or indirectly, the information required under sections 5 and 6 relating to the Canadian business shall include information respecting all entities so acquired whose business activities comprise the Canadian business.

### **Prescribed Business Activities**

8. For the purposes of paragraph 15(a) of the Act, the specific types of business activities set out in Schedule IV are hereby prescribed.

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## **Schedule I (Section 5)**

### **Investor**

1. Name of the investor.
2. Mailing address of the investor.
3. Telephone number and, if any, telex and telecopier numbers.
- 3.01 [Repealed, SOR/95-25, s. 6]
- 3.1 Whether the investor is a WTO investor or a NAFTA investor.
- 3.2 Name and address of the controller of the investor, if any.

### **Investment**

4. Country of origin of investment.
5. Whether investment represents an acquisition of control of a Canadian business or the establishment of a new Canadian business.
6. Date of implementation of investment.

### **Canadian Business**

7. Name of the Canadian business.
8. Business address of the Canadian business.
9. Brief description of the business activities that comprise or will comprise the Canadian business.

### **Acquisition of Control of a Canadian Business**

10. In the case of an acquisition of control of a Canadian business, provide the number of persons employed in connection with the Canadian business.
- 10.01 and 10.02 [Repealed, SOR/95-25, s. 7]

10.1 Where the investor is not a WTO investor or a NAFTA investor, whether the Canadian business is, immediately before the implementation of the investment, controlled by a WTO investor or controlled by a NAFTA investor.

10.2 Where the investor is a WTO investor or a NAFTA investor or where the Canadian business is, immediately before the implementation of the investment, controlled by a WTO investor or controlled by a NAFTA investor, whether the Canadian business

(a) engages in the production of uranium and owns an interest in a producing uranium property in Canada;

b) provides any financial service as defined in subsection 14.1(6) of the Act;

(c) provides any transportation service referred to in subsection 14.1(5) of the Act; or

(d) is a cultural business as defined in subsection 14.1(6) of the Act.

10.3 Where the Canadian business is, immediately prior to the implementation of the investment, controlled outside of Canada, indicate the country of the controller.

11. [Repealed, SOR/95-25, s. 8]

11.1 (1) Where only assets used in carrying on a Canadian business are acquired or where control only of an entity carrying on a Canadian business is acquired, state the value of the aggregate of all assets acquired or of all assets of the entity carrying on the business, calculated in the manner set out in section 3.1 of these Regulations.

(2) Where control of an entity carrying on a Canadian business and control of one or more other entities is acquired, directly or indirectly, state, the value as calculated in the manner set out in section 3.1 of these Regulations

(a) of the aggregate of all assets of the entity carrying on the Canadian business and of all other entities in Canada the control of which is acquired; and

(b) if control of a corporation incorporated elsewhere than in Canada is acquired, directly or indirectly, of the aggregate of all assets of all entities both inside Canada and outside Canada, the control of which is acquired in the same transaction, calculated in the manner set out in section 3.1 of these Regulations.

### **Establishment of a New Canadian Business**

12. In the case of the establishment of a new Canadian business, provide

(a) the projected number of persons to be employed in connection with the new Canadian business at the end of the second full year of operation;

(b) the projected total amount to be invested in the new Canadian business during the first full two years of operation; and

(c) the projected level of annual sales or revenues of the new Canadian business during the second full year of operation.

### **Cultural Heritage or National Identity**

13. If the investment falls within any specific type of business activity set out in Schedule IV,

(a) state which;

(b) provide a description of the business activities carried on by the investor;

(c) provide a description of any business activity carried on by the controller, if any, of the investor that is similar to those stated pursuant to paragraph (a);

(d) provide a description of any products manufactured or sold or to be manufactured or sold, and of any services rendered or to be rendered, by the Canadian business; and

(e) provide, in the case of an acquisition of control of a Canadian business, the name of the vendor and the name of the controller, if any, of the vendor.

SOR/89-69, ss. 3 to 5; SOR/93-604, ss. 5 to 8; SOR/95-25, ss. 5 to 8.

## Schedule II (s. 6)

### Investor

1. Name of the investor.
  - 1.01 [Repealed, SOR/95-25, s. 9]
  - 1.1 Whether the investor is a WTO investor or a NAFTA investor.
2. Business or mailing address of the investor.
3. Telephone number and, if any, telex and telecopier numbers.
4. Name and address of controller of the investor, if any, and the manner in which control is exercised.
5. Annual reports or, if not available, financial statements of the investor for the three fiscal years immediately preceding the implementation of the investment.
6. Description of the business activities carried on by the investor and by its controller, if any.

### Investment

7. Name of the vendor and name of the controller, if any, of the vendor.
8. Copy of purchase and sale agreement or, if not available, an outline of the principal terms and conditions including the estimated total purchase price for the Canadian business and, where applicable, the estimated purchase price for all entities acquired.
9. Date of implementation of investment.

### Canadian Business

10. Name of the Canadian business.
11. Business or mailing address of the Canadian business.
12. Annual reports or, if not available, financial statements for the Canadian business for the three fiscal years immediately preceding the implementation of the investment.
13. Description of the business activities that comprise the Canadian business, including
  - (a) the locations in Canada where the business is being carried on;
  - (b) the business activities carried on at each location; and
  - (c) the number of employees at each location.
- 13.01 [Repealed, SOR/95-25, s. 10]
- 13.1 Where the investor is not a WTO investor or a NAFTA investor, whether the Canadian business is, immediately before the implementation of the investment, controlled by a WTO investor or controlled by a NAFTA investor.

### Assets

14. [Repealed, SOR/95-25, s. 11]
  - 14.1 (1) Where only assets used in carrying on a Canadian business are acquired or where control only of an entity carrying on a Canadian business is acquired, state the value of the aggregate of all assets acquired or of all assets of the entity carrying on the business, calculated in the manner set out in section 3.1 of these Regulations.
  - (2) Where control of an entity carrying on a Canadian business and control of one or more other entities is acquired, directly or indirectly, state, the value as calculated in the manner set out in section 3.1 of these Regulations,
    - (a) the value of the aggregated assets of the entity carrying on the Canadian business and of all other entities in Canada the control of which is being acquired; and
    - (b) if control of a corporation incorporated elsewhere than in Canada is acquired, directly or indirectly, the value of the aggregated assets of all entities both inside and outside Canada, the control which is acquired in the same transaction.

## Plans

15. Detailed description of the investor's plans for the Canadian business with specific reference to
  - (a) the relevant factors set out in section 20 of the Act; and
  - (b) the current operations of the Canadian business.

SOR/89-69, ss. 6, 7; SOR/93-604, ss. 9 to 11; SOR/95-25, ss. 9 to 11.

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## Schedule III (s. 6)

### Investor

1. Name of the investor.
2. Annual reports or, if not available, financial statements of the investor for the three fiscal years immediately preceding the implementation of the investment.

### Canadian Business

3. Expanded description of the business activities that comprise or will comprise the Canadian business, including
  - (a) the locations in Canada where the business is being carried on or is to be carried on;
  - (b) the business activities carried on or to be carried on at each location; and
  - (c) the number of employees at or to be at each location.
4. In the case of an acquisition of control of a Canadian business,
  - (a) annual reports or, if not available, financial statements for the Canadian business for the three fiscal years immediately preceding the implementation of the investment; and
  - (b) copy of purchase and sale agreement or, if not available, an outline of the principal terms and conditions including the estimated total purchase price for the Canadian business and, where applicable, the estimated purchase price for all entities acquired.

### Plans

5. Detailed description of the investor's plans for the Canadian business with specific reference to
  - (a) the relevant factors set out in section 20 of the Act; and
  - (b) the compatibility of the investment with Canada's cultural heritage or national identity.

## Schedule IV (s. 8 and Sch. I)

1. Publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form.
2. Production, distribution, sale or exhibition of film or video products.
3. Production, distribution, sale or exhibition of audio or video music recordings.
4. Publication, distribution or sale of music in print or machine readable form.