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SELECTED READINGS IN LAWS AND REGULATIONS AFFECTING

FOREIGN INVESTMENT IN CANADA, MARCH 1972

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NOTE: - This working paper supersedes "Selected Readings in Laws and Regulations Affecting Foreign Investment in Canada, September 1971" and earlier versions.

Amendments Number 1, 2, 3 and 5 were incorporated in this copy before it was printed. Amendment Number 4 was superseded by Amendment Number 5.

SELECTED READINGS IN LAWS AND REGULATIONS AFFECTING  
FOREIGN INVESTMENT IN CANADA, MARCH 1972

SUMMARY

BROADCASTING

A license to operate a broadcasting station, or permission to operate a network of broadcasting stations, can only be granted to a Canadian citizen; or to a Canadian corporation of which the Chairman and each of the directors are Canadian citizens and of which four-fifths of the shares are owned either by Canadian citizens or by Canadian-controlled corporations. An exception may be allowed in the case of an application for the renewal of a broadcasting licence that was outstanding on April 1, 1968, providing the Commission is satisfied that granting a renewal would not run contrary to public interest and providing the Governor in Council, by order, approves such a renewal.

FINANCIAL INSTITUTIONS

Banks

The Bank Act stipulates that at least three-quarters of the directors of a chartered bank must be Canadian citizens ordinarily resident in Canada. It limits the proportion of shares of a bank which can be held by non-residents to 25 per cent, and the proportion which can be held by any one person (non-resident or resident) to 10 per cent. There is an exception in the case of shares which were owned by non-residents on September 22, 1964.

Insurance Companies

The provisions below are included in the Canadian and British Insurance Companies Act. Their effect is to prevent the takeover of Canadian-controlled companies by non-residents; to permit non-residents to retain an existing degree of control; and to permit non-residents to establish new companies in which non-resident investment is uncontrolled.

Directors

The majority of the directors of a federally incorporated Canadian life insurance company must be Canadian citizens residing in Canada.

### Non-resident shareholders

The general restraints on shareholding are as follows.

When 25 per cent or less of the shares are held by non-residents, the percentage held by non-residents cannot be increased above 25 per cent. Where non-resident holdings are more than 25 per cent, they cannot be increased above the existing percentage.

The holdings of a single non-resident, in conjunction with those of his associates, cannot be increased above 10 per cent of the shares, unless they are already more than 10 per cent, in which case they cannot be increased above their current level.

A new company may be set up with no restraint on the allocation of shares to non-residents before the first general meeting of the shareholders.

Where one non-resident held more than 50 per cent of the shares of a company on the prescribed day, there is no upper limit to the amount of shares which may be held by non-residents. The prescribed day is 23 September, 1964, or the date of the first general meeting of the shareholders if the company was incorporated after that date, or one of two special cases. However, if at any time after the prescribed day no one non-resident holds more than 50 per cent of the shares, then the general limitations on non-resident shareholders will apply.

When a resident holds shares on behalf of a non-resident he shall not exercise the voting rights.

When the shares held by or on behalf of a non-resident, together with shares held by or on behalf of the associates of that non-resident, exceed 10 per cent of the stock, the voting rights appertaining to the non-resident's shares may not be used. Except that, when one non-resident and his associates held more than 10 per cent of the stock on the prescribed day, the non-resident's shares may be voted so long as the holdings of himself and his associates do not exceed the percentage held on that day.

### Loan Companies

The provisions below are included in the Loan Companies Act. Their effect is to prevent the takeover of Canadian-controlled companies by non-residents; to permit non-residents to retain an existing degree of control; and to permit non-residents to establish new companies in which non-resident investment is uncontrolled.

Directors

At least three-quarters of the directors of a federally incorporated loan company must be Canadian citizens ordinarily resident in Canada.

Non-resident shareholders

The provisions for non-resident shareholders in the Loan Companies Act are the same as those in the Canadian and British Insurance Companies Act.

Trust Companies

The provisions below are included in the Trust Companies Act. Their effect is to prevent the takeover of Canadian-controlled companies by non-residents; to permit non-residents to retain an existing degree of control; and to permit non-residents to establish new companies on which non-resident investment is uncontrolled.

Directors

At least three-quarters of the directors of a federally incorporated trust company must be Canadian citizens ordinarily resident in Canada.

Non-resident shareholders

The provisions for non-resident shareholders in the Trust Companies Act are the same as those in the Canadian and British Insurance Companies Act.

Sales Finance Companies

The provisions below are included in the Investment Companies Act. Their effect is to prevent the takeover of Canadian-controlled companies by non-residents; to permit non-residents to retain an existing degree of control; and to permit non-residents to establish new companies in which non-resident investment is uncontrolled.

Auditor

The auditor of a federally incorporated investment company must be ordinarily resident in Canada.

Non-resident shareholders

The provisions for non-resident shareholders are the same as those in the Canadian and British Insurance Companies Act.

## CONSTRAINED-SHARE COMPANIES

The Canada Corporations Act does not itself place constraints on ownership. However, if constraints on the ownership of public companies which do business in Canada are imposed by other federal or provincial legislation, then the Act lays down how they will be applied by the directors of corporations with a federal charter. Provision is made for a company to initiate constraints on non-resident ownership if it so desires.

Amendment No. 3

## SPECIAL ACT COMPANIES - GENERAL

The Canada Corporations Act provides that a majority of the elected directors of a Special Act corporation must be persons resident in Canada and subjects of Her Majesty.

## RESOURCES

Oil and Gas

Oil and gas leases in the Yukon and Northwest Territories can only be granted to a Canadian citizen; or to a Canadian corporation of which the shares are either owned at least 50 per cent by Canadians or listed on a Canadian stock exchange; or to a Canadian corporation which is wholly owned by such a corporation. This provision is made in the Canada Oil and Gas Land Regulations.

Mining

Mining leases in the Northwest Territories can only be granted to a Canadian citizen, or to a corporation the shares of which are either 50 per cent beneficially owned by Canadian citizens or listed on a recognized Canadian stock exchange, or to a Canadian corporation which is wholly owned by such a corporation. This provision is made in the Canada Mining Regulations.

Exploration

The Northern Mineral Exploration Assistance Regulations provide for grants to persons who intend to do exploratory work in Northern Canada. Such a person must be either a Canadian citizen; or a Canadian corporation the shares of which are either owned at least 50 per cent by Canadians or listed on a Canadian stock exchange; or a Canadian corporation which is wholly owned by such a corporation.

## TAXATION

An Act to amend the Income Tax Act includes the following provisions which affect the non-resident investor.

Equity-debt ratios of non-resident shareholders

Where the ratio of total shareholders' equity to the debt due to specified non-residents is less than 1:3, then part of the interest paid to such shareholders will not be deductible as an expense. Decreases in the ratio of equity to debt below 1:3 decrease the deductions allowable for interest payments. A specified non-resident is a shareholder who is either a non-resident-owned investment corporation (which by definition is incorporated in Canada) or a non-resident person (whether natural, institutional, or corporate) having at least 25 per cent ownership interest, either individually or in conjunction with associates.

Advertising in non-Canadian newspapers and periodicals

Outlays for advertising in a non-Canadian newspaper or periodical are not a deductible expense for tax purposes, unless the non-Canadian newspaper or periodical meets two sets of conditions. Firstly, it must have been edited in whole or in part in Canada continuously since 26 April 1964, and have been printed and published in Canada continuously since the same date. Secondly, it must be similar in content and in class of readers to the series edited, printed and published in Canada during the year ending on 26 April, 1965.

Inadequate considerations

Where transactions between residents and non-residents are not at arm's length, the sums involved shall be deemed to be the same as they would have been at arm's length.

Small business deductions

A Canadian-controlled private corporation may qualify, under a complicated formula, for a deduction from its tax otherwise payable.

The deduction is calculated as a percentage of \$50,000, or of one of three other amounts, if lesser. Each of the other amounts is based on certain aspects of the corporation's financial activities. The effect is that \$50,000 is the maximum base on which the deduction can be computed.

The percentage of the basic amount which can be deducted is 25 per cent in 1972, 24 per cent in 1973, 23 per cent in 1974, 22 per cent in 1975 and 21 per cent in 1976 and subsequent taxation years. The maximum tax relief will thus be \$12,500 in 1972, \$12,000 in 1973, \$11,500 in 1974, \$11,000 in 1975 and \$10,500 in 1976 and subsequent taxation years.

After 1972, or after the first year in which it begins to have a taxable income, an individual corporation will be phased out of receiving this benefit under a formula based on one of two things. One base is the cumulative total of taxable income in 1972 and later years. The alternative base is one and one-third of the amounts deducted from the corporation's income on account of dividends received from specified types of corporations. From each base is deducted a component which consists of one and one-third of taxable dividends paid during those years plus four times the amount by which refundable dividend tax on hand exceeds the dividend refund during the year in question. When either the cumulated taxable income or the cumulated amounts deductible exceed the aggregate of the component based on taxable dividends by \$400,000 or more, no tax benefit can be claimed.

The effect of this provision is progressively to exclude corporations from the benefit, beginning in 1973. In general, the larger the business the sooner it will lose the benefit.

#### Dividends to non-residents

The general rate of withholding tax on dividends paid to non-residents will remain at 15 per cent until 1976, at which time it will be increased to 25 per cent unless reduced by treaty. The withholding tax on dividends paid to non-residents by a corporation having a degree of Canadian ownership, as defined in the Act, will continue to be 5 per cent less than the general rate.

#### Branches of foreign corporations

Up to the end of 1975, foreign-incorporated companies carrying on business in Canada will continue to pay a branch tax of 15 per cent on net profits that are not reinvested in capital assets. This tax will be increased to 25 per cent for the 1976 taxation year. There is an exemption under this section for foreign-incorporated banks, for foreign corporations whose principal business activity is transportation or communications, and for foreign corporations whose principal business is mining iron ore in Canada. There is an exemption for non-resident insurance companies, except that they pay 25 per cent of the excess of deductions from their Canadian investment funds over liabilities incurred in the course of carrying on insurance business in Canada.



## INDIVIDUAL SPECIAL ACT COMPANIES

Telesat Canada

The Telesat Canada Act stipulates that directors of Telesat Canada must be Canadian citizens resident in Canada. All officers of the company must be Canadian citizens. Non-resident ownership of voting shares is limited to 20 per cent of the outstanding common shares held by persons other than Her Majesty in right of Canada, corporations declared by statute to be her agents, and approved telecommunications common carriers. No common shares can be owned by a foreign government or its agents.

Canada Development Corporation

All of the directors of the Canada Development Corporation must be Canadian citizens. A majority of the directors must also be resident in Canada. Holders of voting shares must be either Canadian citizens or residents of Canada. No one person may hold, either individually or in conjunction with other shareholders associated with him, more than 3 per cent of the issued and outstanding voting shares of the company.

## TRANSPORTATION

Aeronautics Act

No person may fly an aircraft in Canada unless it is registered under the Aeronautics Act, or under the laws of specified other countries.

An aircraft other than a state aircraft cannot be registered unless it is owned exclusively by a qualified person.

Three classes of person may be registered as the owners of a Canadian non-state aircraft. They are Canadian citizens; landed immigrants who have been resident for not more than six years; and companies incorporated in Canada, at least two-thirds of whose directors are Canadian citizens.

An additional two classes of person may be registered as the owners of a private Canadian aircraft only. They are citizens or subjects of specified other countries who normally reside in Canada; and companies incorporated in Canada. Aircraft owned by these two classes can be operated outside Canada only for limited periods.

## OWNERSHIP OF REAL AND PERSONAL PROPERTY

Canadian Citizenship Act

Under the provisions of the Canadian Citizenship Act, an alien has the same rights as a natural-born Canadian citizen in the taking, acquiring, holding and disposing of any real and personal property.

## REVIEW OF FOREIGN INVESTMENT

### Foreign Investment Review Act

#### General

The Foreign Investment Review Act was enacted on 12 December 1973. It provides that the acquisition of control over a Canadian business enterprise by non-eligible persons, or the establishment by them in Canada of a new business unrelated to any business which they may already be carrying on in Canada, is subject to approval by the Government. The review process for takeovers came into effect on 9 April 1974. Screening of the establishment of new businesses will begin later.

The Minister of Industry, Trade and Commerce is responsible for the review and assessment of proposed investments which are subject to the Act and for making recommendations to the Government. A Foreign Investment Review Agency headed by a Commissioner advises and assists the Minister in the administration of the Act. Responsibility for informing the Agency in advance of a proposed acquisition of control or, when it becomes appropriate, of the proposed establishment of a new business rests with the non-eligible persons concerned.

Some main features of the Act are set out below.

#### Non-eligible Person

A non-eligible person may be either an individual, a corporation, or a government or its agency.

An individual is non-eligible if he is neither a Canadian citizen nor a landed immigrant. Certain classes of Canadian citizens not ordinarily resident in Canada have been prescribed as non-eligible by regulation. If a landed immigrant has been resident in Canada for more than one year after he or she could have applied for Canadian citizenship, (that is to say, in most cases, if he or she has been resident as a landed immigrant for more than six years) he or she is non-eligible.

The government of a country other than Canada or of a political sub-division of such a country is a non-eligible person, as is an agency of such a government.

A corporation which is controlled in any manner that results in control in fact by a non-eligible individual or government, or by a group of persons any member of which is a non-eligible individual or government, is itself a non-eligible person.

Procedure for Screening

When a non-eligible person, or a group of persons any member of which is a non-eligible person, proposes to acquire control of a Canadian business enterprise which is greater than the minimum size prescribed, it must give the Agency notice in writing of its proposal. In this context, control of a business can be acquired only by the acquisition of shares to which voting rights are attached, or by the acquisition of all or substantially all of the property used for carrying out the business in Canada.

Once screening of the establishment of new businesses begins, then a non-eligible person or group of persons containing one which proposes to establish a new business in Canada, and does not at the time carry on any business in Canada which is related to the proposed business, will have to give the Agency notice in writing of its proposal.

If the Minister believes that any non-eligible person or group of persons containing one has acquired control of an existing business (or once the Act is fully in effect established a new business) without informing the Agency, or proposes to do so, he may require it to give notice in writing to the Agency.

The Minister will review the application, bearing in mind any representations which may be submitted by a province likely to be significantly affected, and will assess whether the proposed or actual investment is likely to be of significant benefit to Canada. If he considers that it is likely to be of significant benefit, he will recommend to the Government that it be allowed. The Government will then decide whether or not to allow the investment, and the Agency will inform the applicant of the decision. Alternatively, the Government may return the application to the Minister for further consideration.

If the Minister is unable to complete his assessment of an application within 60 days of its receipt by the Agency and requires further time for consideration, or if the Minister is unable to recommend that the application be approved, the applicant will be so informed and told of his right to make representations in connection with the matter.

If the applicant then wishes to make representations, the Minister will give him a reasonable opportunity to do so and to make written undertakings about the investment. The Minister may also consult

with any other party to the investment, or with any person or authority named by any party to the investment.

After considering all representations and consultations, including any representations submitted by a province that is likely to be significantly affected, the Minister will, if he considers that the investment is likely to be of significant benefit to Canada, recommend to the Government that it be allowed. Otherwise, he will recommend that the Government disallow the investment. The Government will then make its decision, and the Agency will inform the applicant of it.

If, 60 days after an application has been received by the Agency, the Government has not made a decision and the Minister has not informed the applicant that further time is needed for consideration, the Government shall be deemed to have allowed the investment.

If a non-eligible person makes a screenable investment without getting permission first, he can subsequently be required to give notice of the investment to the Agency in writing. If he fails to give this notice within the time stipulated, or if the Government refuses to allow the investment, the Minister can make application to a superior court to have the investment rendered nugatory.

#### Criteria for Significant Benefit

Five criteria will be used to determine whether a proposed investment is of significant benefit to Canada: (1) the effect on the level and nature of economic activity in Canada, including the effect on employment, on resource processing, on the use of Canadian parts, components and services, and on exports; (2) the degree and significance of participation by Canadians in the business enterprise and its affiliates; (3) the effect on productivity, industrial efficiency, technological development, product innovation, and product variety in Canada; (4) the effect on competition within any industry or industries in Canada; (5) the compatibility with national industrial and economic policies, taking into consideration industrial and economic policy objectives enunciated by any province likely to be significantly affected.

#### Threshold

With regard to takeovers, the Act applies initially to acquisitions of control over Canadian business enterprises the gross assets of which exceed \$250,000 or the gross annual revenues of which exceed

\$3,000,000. After screening of the establishment of new businesses has begun, the lower limit to the size of a screenable takeover will be eliminated unless the non-eligible investor is already carrying on in Canada a business which is related to the business of which he proposes to acquire control.

The establishment of a new business by a non-eligible person who is not carrying on a related business in Canada will be subject to review irrespective of its size.

Venture Capital

If a person's business consists of providing venture capital in Canada, then the acquisition of shares in a corporation by that person in the ordinary course of business does not constitute the acquisition of control.

## INTRODUCTION

In the course of its studies into foreign direct investment in Canadian industry, the Foreign Investment Division has assembled a number of extracts from Canadian legislation in related fields. Some of them define Canadian ownership or control of business enterprises, some make specific provision for its encouragement, and some deal with transactions of a type likely to be found within an international enterprise.

The first working paper to be based on this material was "Selected Readings In Laws And Regulations Affecting Foreign Investment In Canada" which was issued in December 1969. This was followed by "Selected Readings In Laws And Regulations Affecting Foreign Investment In Canada, April 1971"; by "Selected Readings In Laws And Regulations Affecting Foreign Investment In Canada, June 1971"; by "Selected Readings In Laws and Regulations Affecting Foreign Investment In Canada, August 1971"; and by "Selected Readings in Laws and Regulations Affecting Foreign Investment in Canada, September 1971". The present working paper supersedes the previous ones.

The main change from "Selected Readings in Laws and Regulations Affecting Foreign Investment in Canada, September 1971" is the inclusion of An Act to amend the Income Tax Act. This Act had been given Royal Assent by the date of writing, but had not yet been proclaimed.

When the previous version was issued in September 1971, the Investment Companies Act and the Canada Development Corporation Act had been given Royal Assent. They have since been proclaimed.

No claim is made that the selection of quotations in this or the previous working papers is exhaustive, and the texts quoted should be regarded only as a guide. Full references are given to the documents from which the items have been extracted, so as to assist the reader in finding authoritative sources.

To the best of the Division's knowledge, the extracts were up to date at mid-day on 20 March, 1972.

BROADCASTING ACT

Broadcasting policy for Canada

Sec. 3 (b) The Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

Canadian Radio-Television Commission

Sec. 5 (1) There shall be a commission to be known as the Canadian Radio-Television Commission, consisting of five full time members and ten part-time members to be appointed by the Governor in Council.

Sec. 7 (1) A person is not eligible to be appointed or to continue as a member of the Commission, if he is not a Canadian citizen ordinarily resident in Canada ...

Licences

Sec. 22 (1) No broadcasting licence shall be issued, amended or renewed pursuant to this part

- (a) in contravention of any direction to the Commission issued by the Governor in Council under the authority of this Act respecting
  - (iii) the classes of applicants to whom broadcasting licences may not be issued or to whom amendments or renewals thereof may not be granted ...

Directions by the Governor in Council

Sec. 27 (1) The Governor in Council may by order from time to time issue directions to the Commission as provided for by subsection 18 (2) and paragraph 22 (1) (a).

DIRECTION TO THE CANADIAN RADIO-TELEVISION COMMISSION  
PURSUANT TO SECTION 27 OF THE BROADCASTING ACT

1. The Canadian Radio-Television Commission is hereby directed that on and after the twelfth day of January, 1971 broadcasting licences may not be issued and renewals of broadcasting licences may not be granted to applicants of the classes described in paragraph 2.

2. The classes referred to in paragraph 1 are as follows:

- (a) persons who are not Canadian citizens or eligible Canadian corporations; and
- (b) governments of countries other than Canada or of political subdivisions of countries other than Canada and agents of such governments.

4. For the purposes of this direction, an "eligible Canadian corporation" is a corporation

- (a) that is incorporated under the laws of Canada or a province;
- (b) of which the chairman or other presiding officer and each of the directors or other similar officers are Canadian citizens; and
- (c) of which, if it is a corporation having share capital, at least four-fifths of the shares having full voting rights under all circumstances, and shares representing in the aggregate at least four-fifths of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations that are controlled directly or indirectly by citizens or subjects of a country other than Canada;

except that, in any case where in the opinion of the Commission, notwithstanding that the corporation is one to which subparagraphs (a), (b) and (c) apply, the corporation is effectively owned or controlled either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the outstanding debt of the corporation or in any other manner whatever, by or on behalf of any person, body or authority of a class described in paragraph 2, the corporation shall be deemed not to be an eligible Canadian corporation.

5. With respect to any shares of a corporation of a particular class that, according to the relevant records that the corporation is required to keep under the law of the place of its incorporation, are held by individuals each of whom holds one per cent or less of the total number of issued shares of the corporation of that class, the Commission may, in the absence of any evidence to the contrary, accept as evidence that such shares are beneficially owned by Canadian citizens, a statement signed by the president, secretary or treasurer of the corporation, or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation, indicating

- (a) that according to those records the individuals who hold the shares are individuals having addresses in Canada; and
- (b) that the person by whom the statement is signed has no knowledge or reason to believe that the shares are not beneficially owned by Canadian citizens.



6. An applicant for the renewal of a broadcasting licence that was outstanding on the 1st day of April, 1968 to whom, but for this paragraph, such renewal may not be granted by virtue of this direction shall be deemed, for the purposes of that application only, not to be an applicant of a class described in paragraph 2 if

- (a) the Commission is satisfied that it would not be contrary to the public interest to grant the renewal applied for by the applicant; and
- (b) the Governor in Council, by order, approves of the grant of the renewal after submission to him by the Commission of the application, together with a statement of the Commission's reasons why it is satisfied that it would not be contrary to the public interest to grant the renewal.

7. Nothing in this direction shall be construed as limiting

- (a) the power of the Governor in Council to direct that amendments of broadcasting licences may not be granted to applicants of a class described in paragraph 2 or that broadcasting licences may not be issued and amendments or renewals of broadcasting licences may not be granted to applicants of classes other than a class described in paragraph 2, or
- (b) the power of the Canadian Radio-Television Commission, in carrying out its objects, to refuse to grant an amendment of a broadcasting licence to an applicant of a class described in paragraph 2, or to refuse to issue a broadcasting licence to or to grant an amendment or renewal of a broadcasting licence to an applicant of a class other than a class described in paragraph 2.

Source: "Broadcasting Act, Direction to the Canadian Radio-Television Commission", The Canada Gazette, Part II, Vol. 103, No. 23, SOR/69-590 P.C. 1969-2229, p.p. 1695-1698, Queen's Printer, Ottawa, 1969.

"Broadcasting Act, Direction to the Canadian Radio-Television Commission", The Canada Gazette, Part II, Vol. 105, No. 2, SOR/71-33, P.C. 1971-37, p.p. 86-87, Queen's Printer, Ottawa, 1971.

BANK ACT

Qualification of provisional directors

Sec. 10 (4) At least three-quarters of the provisional directors shall be Canadian citizens ordinarily resident in Canada. 1966-67, c.87, s.10.

Qualification of directors

Sec. 18 (3) At least three-quarters of the directors shall be Canadian citizens ordinarily resident in Canada.

(4) The election or appointment of any person as a director is void if the composition of the board of directors would as a result thereof fail to comply with subsection (3).

Disqualification of directors

Sec. 20 (2) A director ceases to be a director if

- (b) he ceases to be a Canadian citizen ordinarily resident in Canada and as a result thereof the composition of the board of directors ceases to comply with subsection 18 (3). 1966-67, c.87, s.20.

Definition of non-resident

Sec. 52 (1) In this section and sections 53 to 57 "non-resident" means

- (a) an individual who is not ordinarily resident in Canada,
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (c) the government of a foreign state or any political subdivision thereof, or an agent of either,
- (d) a corporation that is controlled directly or indirectly by non-residents as defined in any of paragraphs (a) to (c),
- (e) a trust
  - (i) established by a non-resident as defined in any of paragraphs (b) to (d) other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or
  - (ii) in which non-residents as defined in any of paragraphs (a) to (d) have more than fifty per cent of the beneficial interest, or
- (f) a corporation that is controlled directly or indirectly by a trust defined in paragraph (e) as a non-resident.

Shares held jointly

Sec. 52 (4) For the purposes of sections 53 to 57, where a share of the capital stock of the bank is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

Change of status of resident corporation or trust

(5) Where after the 30th day of April 1967 a corporation or trust that was at any time a resident becomes a non-resident, any shares of the capital stock of the bank acquired by the corporation or the trust while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 53 and 54, to be shares held by a resident for the use or benefit of a non-resident.

Limit on shares held by non-residents

Sec. 53 (1) The Bank shall refuse to allow a transfer of a share of the capital stock of the bank to a non-resident to be made or recorded in a register of transfers of the bank

- (a) if, when the total number of shares of the capital stock of the bank held by non-residents exceeds twenty-five per cent of the total number of the issued and outstanding shares of such stock, the transfer would increase the percentage of such shares held by non-residents; or
- (b) if, when the total number of shares of the capital stock of the bank held by non-residents is twenty-five per cent or less of the total number of the issued and outstanding shares of such stock, the transfer would cause the total number of such shares held by non-residents to exceed twenty-five per cent of the total number of the issued and outstanding shares of such stock.

(2) The bank shall refuse to allow a transfer of a share of the capital stock of the bank to any person ...

- (a) if, when the total number of shares of the capital stock of the bank held by such person and by other shareholders associated with him, if any, exceeds ten per cent of the total number of the issued and outstanding shares of such stock, the transfer would increase the percentage of such shares held by such person or by other shareholders associated with him, if any; or
- (b) if, when the total number of shares of the capital stock of the bank held by such person and by other shareholders associated with him, if any, is ten per cent or less of the total number of the issued and outstanding shares of such stock, the transfer would cause the total number of such shares held by such person and by other shareholders associated with him, if any, to exceed ten per cent of the issued and outstanding shares of such stock.

No shares to be transferred to a government

(3) The bank shall refuse to allow a transfer of a share of the capital stock of the bank to

- (b) the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof,

to be made or recorded in a register of transfers of the bank.

(4) The bank shall not accept a subscription for a share of the capital stock of the bank

- (a) ... by the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof,

Voting by resident nominees of non-residents prohibited

Sec. 54 (1) Notwithstanding section 31, and except as provided in section 56, where a resident holds shares of the capital stock of the bank in the right of, or for the use or benefit of, a non-resident, the resident shall not, in person or by proxy, exercise the voting rights pertaining to those shares.

Computing non-resident holdings

Sec. 55 (4) Where for any of the purposes of section 53, the bank requires that the total number of shares of the capital stock of the bank held by non-residents be established, the bank may calculate the total number of such shares held by non-residents to be the total of

- (a) the number of shares held by all shareholders whose recorded addresses are places outside Canada; and

- (b) the number of shares held by all shareholders each of whose aggregate individual holdings of such shares has a par value of more than five thousand dollars and whose recorded addresses are places within Canada but who to the knowledge of the bank are non-residents:

and such calculation may be made as of a date not earlier than the 1st day of May, 1967 or four months before the day on which the calculation is made, whichever is the later date.

#### Limiting Transfers

(5) Where by any calculation made under subsection (4) the total number of shares held by non-residents is under twenty-five per cent of the total issued and outstanding shares of the capital stock of the bank, the number of shares the transfer of which by residents to non-residents the bank may allow to be made or recorded in the registers of transfers of the bank shall be so limited as not to increase the total number of shares held by non-residents to more than twenty-five per cent of the total issued and outstanding shares of the capital stock of the bank.

#### Definitions

Sec. 56 (1) In this section,

##### Associates of the non-resident

"associates of the non-resident" means, with reference to any particular day,

- (a) any shareholders associated with the non-resident on that day, and
- (b) any persons who would, under subsection 52 (2), be deemed to be shareholders associated with the non-resident on that day if both he and such persons were shareholders;

##### Prescribed day

"prescribed day" means the 17th day of February 1965;

##### Shares held by or for the non-resident and associates

"shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day;

#### Non-resident ownership of bank

(2) Where more than twenty-five per cent of the issued and outstanding shares of the capital stock of the bank were held on the 22nd day of September 1964 in the name or right of or for the use or benefit of any one non-resident, the bank, so long as the total number of shares of the capital stock of the bank held by non-residents exceeds twenty-five per cent of the total number of issued and outstanding shares of the capital stock of the bank,

- (a) shall refuse to allow a transfer of a share of the capital stock of the bank to a non-resident to be made or recorded in a register of transfers of the bank unless the transfer is from a non-resident to any associates of the non resident; and
- (b) shall not accept a subscription for a share of the capital stock of the bank by a non-resident;

but if at any time after the 22nd day of September 1964 there is no one person in whose name or right or for whose use or benefit more than ten per cent of the issued and outstanding shares of the capital stock of the bank are held, this subsection ceases thereafter to have any force or effect.

Exception for individual non-resident and associate holdings

(4) Where on the 22nd day of September 1964 the number of shares of the capital stock of the bank held in the name or right of or for the use or benefit of a non-resident together with the number of such shares, if any, held on that day in the name or right of or for the use or benefit of any associates of the non-resident exceeded ten per cent of the number of shares of the capital stock of the bank at that time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the non-resident may, notwithstanding subsection 54 (2), be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates on the 22nd day of September 1964 or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 54 does not apply.

Transfer by Nominees

(5) Notwithstanding subsections 53 (2) and (3), the bank may allow a transfer of a share of the capital stock of the bank to be made or recorded in a register of transfers of the bank where the transfer is to

- (b) the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof, ...

if it is shown to the bank on evidence satisfactory to it that the share was at the commencement of the prescribed day held in the right of or for the use or benefit of the transferee.

Voting rights on non-resident holdings acquired after 22nd September 1964.

(6) If, at any time after the 22nd day of September 1964 and before the first day of May 1967, the bank allowed to be made or recorded in a register of transfers of the bank a transfer of any share of the capital stock of the bank to a non-resident that it would have been required to refuse under section 53 had that section come into force on the 23rd day of September 1964, no person shall, in person or as proxy, exercise the voting rights pertaining to such share until such time as the share is transferred to a resident, unless

- (a) the total par value of all shares of the capital stock of the bank held by the non-resident is not more than five thousand dollars, or
- (b) the percentage of the shares of the capital stock of the bank held by non-residents on the 1st day of May 1967 does not exceed
  - (i) twenty-five per cent, or
  - (ii) the percentage of such shares held by non-residents on the 22nd day of September 1964 if such percentage was on that day greater than twenty-five per cent, and the total number of such shares held by or for the non-resident and associates does not exceed ten per cent of the total number of the issued and outstanding shares of the capital stock of the bank;

but nothing in this subsection shall be construed to permit any person to exercise the voting rights pertaining to a share of the capital stock of the bank that is held in the name of the government of a foreign state or any political subdivision thereof or an agent of the government of a foreign state or any political subdivision thereof, if the transfer of the share to the holder was made or recorded in a register of transfers of the bank on or after the prescribed day.

Calculation of non-resident shareholders

(8) For the purposes of subsection (6), the total number of shares of the capital stock of the bank held by non-residents on the 22nd day of September 1964, or on any day thereafter to and including the 1st day of May 1967, may be calculated, in respect of any of those days, in the same manner as the total number of such shares may be calculated under subsection 55 (4).  
1966-67, c.87, s.56.

Prohibitions

Sec. 75 (2) Except as authorized by or under this Act, the bank shall not, directly or indirectly,

(g) at any time after the 31st day of December 1967 or after such later day, not being a day later than the 31st day of December, 1972, as may be prescribed from time to time by the Governor in Council, have outstanding total liabilities (including paid-up capital, rest account and undivided profits) exceeding twenty times its authorized capital stock if more than twenty-five per cent of its issued shares are held by any one resident or non-resident shareholder and his associates as described in section 56.

Source: "The Bank Act", Revised Statutes of Canada 1970, Chap. B-1  
Queen's Printer, Ottawa, 1970.

CANADIAN AND BRITISH INSURANCE COMPANIES ACT

Directors

Sec. 6 (4) A majority of all the directors of the company, and, in the case of a company having more than one class of directors, of the ordinary directors or shareholders' directors, as the case may be, of the company, shall at all times be Canadian citizens ordinarily resident in Canada.

(5) The election or appointment of a person as a director is void if the composition of the Board of Directors as a result thereof fails to comply with the requirements of subsection (4) and a director ceases to be a director if he ceases to be a Canadian citizen ordinarily resident in Canada and the composition of the board as a result thereof ceases to comply with the requirements of subsection (4).

Sec. 17 (1) The directors of a company registered to transact the business of life insurance may allow or refuse to allow the entry in any such book or books, or any transfer of stock that would, in the opinion of the directors, result in that stock being held in the name or right of, or for the use or benefit of,

- (a) a person who is not a Canadian citizen ordinarily resident in Canada,
- (b) a corporation, association, partnership or other organization incorporated, formed or otherwise organized elsewhere than in Canada, or
- (c) a corporation, association, partnership or other organization that, in the opinion of the directors, is controlled, whether directly or indirectly and whether through holding a majority of the shares thereof or other voting interest therein or in any other manner whatever, by persons who are not Canadian citizens ordinarily resident in Canada.

(2) Subsection (1) does not apply to permit the directors of a company registered to transact the business of life insurance to refuse to allow the entry in any such book or books, of any transfer of stock held in the name or right of, or for the use or benefit of, any person, corporation, association, partnership or organization mentioned in paragraph (1) (a), (b) or (c).  
1957-58, c.11, s.3.

Definitions

Sec. 18. (1) In this section and sections 19 to 22,

Non-resident

"non-resident" means

- (a) an individual who is not ordinarily resident in Canada.
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada.
- (c) a corporation that is controlled directly or indirectly by non-residents as defined in paragraph (a) or (b).
- (d) a trust established by a non-resident as defined in paragraph (a), (b), or (c), or a trust in which non-residents as so defined have more than fifty per cent of the beneficial interest, or
- (e) a corporation that is controlled directly or indirectly by a trust mentioned in paragraph (d);

### Shares held jointly

(3) For the purposes of sections 19 to 22, where a share of the capital stock of a life company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident. 1964-65, c.40, s.3.

### Limit on shares held by non-residents

Sec. 19. (1) The directors of a life company shall refuse to allow in the book or books referred to in section 15 the entry of a transfer of any share of the capital stock of the company to a non-resident

- (a) if, when the total number of shares of the capital stock of the company held by non-residents exceeds twenty-five per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by non-residents;
- (b) if, when the total number of shares of the capital stock of the company held by non-residents is twenty-five per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the total number of such shares of stock held by non-residents to exceed twenty-five per cent of the total number of issued and outstanding shares of such stock;
- (c) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds ten per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any; or
- (d) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is ten per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the non-resident and by other shareholders associated with him, if any, to exceed ten per cent of the issued and outstanding shares of such stock.

### Allotment to non-resident

(2) The directors of a life company shall not, after the day of commencement of the first general meeting of the shareholders of the company, allot, or allow the allotment of, any shares of the capital stock of the company to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in such book or books would be required, under subsection (1), to be refused by the directors.

### Penalty

(3) Default in complying with the provisions of this section does not affect the validity of a transfer or allotment of a share of the capital stock of the life company that has been entered in such book or books, but every director who knowingly authorizes or permits such default is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both. 1964-65, c.40, s.3.

### Voting rights of nominees

Sec. 20. (1) Where a resident holds shares of the capital stock of a life company in the right of, or for the use or benefit of, a non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.



### Voting rights of non-residents

(2) Subject to subsection 22 (3), where any shares of the capital stock of a life company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of

- (a) any shareholders associated with the non-resident, or
- (b) any persons who would, under subsection 18 (2), be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number ten per cent of the issued and outstanding shares of such stock.

### Penalty

(3) Every person who knowingly contravenes a provision of this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

### Definitions

Sec. 22. (1) In this section

#### Associates of the non-resident

"associates of the non-resident" means, with reference to any particular day,

- (a) any shareholders associated with the non-resident on that day, and
- (b) any persons who would, under subsection 18 (2), be deemed to be shareholders associated with the non-resident on that day were such persons and the non-resident themselves shareholders;

#### Prescribed day

"prescribed day" means

- (a) the 23rd day of September 1964, in the case of a life company that was a life company on that date,
- (b) the date of commencement of the first general meeting of the shareholders of the company, in the case of a company incorporated after the 23rd day of September 1964,
- (c) the date that a company becomes registered to transact the business of life insurance, in the case of a company incorporated before the 23rd day of September 1964, but not so registered on that date, and
- (d) the date of the issue of letters patent pursuant to section 4.5, in the case of a corporation continued as a corporation pursuant to that section;

#### Shares held by or for the non-resident and associates

"shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day.

Exception for non-resident ownership of company

(2) Where more than fifty per cent of the issued and outstanding shares of the capital stock of a life company are held in the name or right of or for the use or benefit of one non-resident at the commencement of the prescribed day, Sections 19 to 21 do not apply to or in respect of that company; but if at any time thereafter there is no one non-resident in whose name or right of or for whose use or benefit more than fifty per cent of the issued and outstanding shares of the capital stock of the life company are held, those sections apply from and after that time to in and respect of that company.

Exception for individual non-resident

(3) Where at the commencement of the prescribed day the number of shares of the capital stock of a life company held in the name or right of or for the use or benefit of a non-resident together with the number of such shares, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the non-resident exceed ten per cent of the number of shares of such stock at that time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the non-resident may notwithstanding subsection 20(2) be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 20 does not apply.

Change of status of corporate resident

(4) Where after the 17th day of March 1965 a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of a life company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 19 and 20, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits

(5) Where on or after the prescribed day the par value of shares of the capital stock of a life company is reduced, the directors of the life company may, notwithstanding subsection 19(2), allot shares of the capital stock of the life company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.

Transferring beneficial holding

(6) The directors of a life company may, notwithstanding section 19, allow in the book or books referred to in section 15 the entry of a transfer of any share of the capital stock of the company from a resident to a non-resident where it is shown to the directors on evidence satisfactory to them that the share was at the commencement of the prescribed day held by the resident in the right of or for the use or benefit of the non-resident.

Entry after prescribed day

(7) If at any time on or after the prescribed day and before the 18th day of March 1965 the directors of a life company allow, in the book or books referred to in section 15, the entry of any transfer or allotment of any share of the capital stock of the company to a non-resident that they would have been required to refuse or prevent under section 19 had that section come into force on the prescribed day, no person shall, as proxy or in person, exercise the voting rights pertaining to such share so long as the share is held in the name or right of or for the use or benefit of any non-resident.

Conclusions reached by directors re resident or non-resident status

(9) In determining for the purposes of this section and sections 18 to 21 whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a life company may rely upon any statements made in any declarations submitted under section 21 or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1964-65 c.40, s.3.

Source: "Canadian and British Insurance Companies Act", Revised Statutes of Canada, 1970 Chap. I-15, Queen's Printer, Ottawa, 1970.

"Canadian and British Insurance Companies Act", Revised Statutes of Canada, 1970, 1st supplement, Chapter 19, Queen's Printer, Ottawa, 1970.

LOAN COMPANIES ACT

Directors

Sec. 19. At least three-quarters of the directors of the company must be Canadian citizens ordinarily resident in Canada.

Definitions

Sec. 44. (1) In this section and sections 45 to 48 "non-resident" means

- (a) an individual who is not ordinarily resident in Canada
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (c) a corporation that is controlled directly or indirectly by non-residents as defined in paragraph (a) or (b),
- (d) a trust established by a non-resident as defined in paragraph (a), (b) or (c), or a trust in which non-residents as so defined have more than fifty per cent of the beneficial interest, or
- (e) a corporation that is controlled directly or indirectly by a trust mentioned in paragraph (d).

Shares held jointly

(3) For the purposes of sections 45 to 48, where a share of the capital stock of a company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident. 1964-65, c.40, s.38.

Limit on shares held by non-residents

Sec. 45. (1) The directors of a company shall refuse to allow in the book or books referred to in section 42 the entry of a transfer of any share of the capital stock of the company to a non-resident

- (a) if, when the total number of shares of the capital stock of the company held by non-residents exceeds twenty-five per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by non-residents;
- (b) if, when the total number of shares of the capital stock of the company held by non-residents is twenty-five per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the total number of such shares of stock held by non-residents to exceed twenty-five per cent of the total number of issued and outstanding shares of such stock;
- (c) when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds ten per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any; or
- (d) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is ten per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the non-resident and by other shareholders associated with him, if any, to exceed ten per cent of the issued and outstanding shares of such stock.

Allotment to non-resident

(2) The directors of a company shall not, after the day of commencement of the first general meeting of the shareholders of the company, allot, or allow the allotment of, any shares of the capital stock of the company to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in such book or books would be required, under subsection (1), to be refused by the directors.

Penalty

(3) Default in complying with the provisions of this section does not affect the validity of a transfer or allotment of a share of the capital stock of the company that has been entered in the book or books referred to in section 42, but every director who knowingly authorizes or permits such default is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both. 1964-65, c.40. s.38.

Voting rights of nominees suspended

Sec. 46. (1) Where a resident holds shares of the capital stock of a company in the right of, or for the use or benefit of, a non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

Voting rights of non-residents

(2) Subject to subsection 48 (3), where any shares of the capital stock of a company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of

- (a) any shareholders associated with the non-resident, or
- (b) any persons who would, under subsection 44 (2), be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number ten per cent of the issued and outstanding shares of such stock.

Penalty

(3) Every person who knowingly contravenes a provision of this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Definitions

Sec. 48. (1) In this section,

Associates of the non-resident

"associates of the non-resident" means, with reference to any particular day,

- (a) any shareholders associated with the non-resident on that day, and
- (b) any persons who would, under subsection 44 (2), be deemed to be shareholders associated with the non-resident on that day were such persons and the non-resident themselves shareholders;

"Prescribed day" means

- (a) the 23rd day of September 1964, in the case of a loan company to which this Act applies that was such a company on that date,
- (b) the day of commencement of the first general meeting of the shareholders of the company, in the case of a loan company to which this Act applies and incorporated after the 23rd day of September 1964, and
- (c) the date of the issue of letters patent pursuant to section 7, in the case of a corporation continued as a corporation pursuant to that section;

Shares held by or for the non-resident and associates

"shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day.

Exception for non-resident ownership

(2) Where more than fifty per cent of the issued and outstanding shares of the capital stock of a company are held in the name or right of or for the use or benefit of one non-resident at the commencement of the prescribed day, sections 45 to 47 do not apply to or in respect of that company; but if at any time thereafter there is no one non-resident in whose name or right or for whose use or benefit more than fifty per cent of the issued and outstanding shares of the capital stock of the company are held, those sections apply from and after that time to and in respect of that company.

Exception for individual non-resident

(3) Where at the commencement of the prescribed day the number of shares of the capital stock of a company held in the name or right of or for the use or benefit of a non-resident together with the number of such shares, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the non-resident exceed ten per cent of the number of shares of such stock at that time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the non-resident may notwithstanding subsection 46 (2) be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 46 does not apply.

Change of status of corporate resident

(4) Where after the 17th day of March 1965 a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 45 and 46, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection 45 (2), allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value but not so as thereby to effect an increase

in the aggregate par value of the shares of such stock held by the non-resident.

Transferring beneficial holding

(6) The directors of a company may, notwithstanding section 45, allow in the book or books referred to in section 42 the entry of a transfer of any share of the capital stock of the company from a resident to a non-resident where it is shown to the directors on evidence satisfactory to them that the share was at the commencement of the prescribed day held by the resident in the right of or for the use or benefit of the non-resident.

Entry after prescribed day

(7) If at any time on or after the prescribed day and before the 18th day of March 1965 the directors of a company allow, in the book or books referred to in section 42, the entry of any transfer or allotment of any share of the capital stock of the company to a non-resident that they would have been required to refuse or prevent under section 45 had that section come into force on the prescribed day, no person shall, as proxy or in person, exercise the voting rights pertaining to such share so long as the share is held in the name or right of or for the use or benefit of any non-resident.

Conclusions reached by directors re residents or non-resident status

(9) In determining for the purposes of sections 44 to 48 whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 47 or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1964-65, c.40, s.38.

Source: "Loan Companies Act", Revised Statutes of Canada, 1970, Chapter L-12, Queen's Printer, Ottawa, 1970.

"Loan Companies Act", Revised Statutes of Canada, 1970, 1st Supplement, Chapter 24, Queen's Printer, Ottawa, 1970.

TRUST COMPANIES ACT

Directors

Sec. 19. At least three-quarters of the directors of the company must be Canadian citizens ordinarily resident in Canada.

Definitions

Sec. 37. (1) In this section and sections 38 to 41 "non-resident" means

- (a) an individual who is not ordinarily resident in Canada,
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (c) a corporation that is controlled directly or indirectly by non-residents as defined in paragraph (a) or (b)
- (d) a trust established by a non-resident as defined in paragraph (a), (b) or (c), or a trust in which non-residents as so defined have more than fifty per cent of the beneficial interest, or
- (e) a corporation that is controlled directly or indirectly by a trust mentioned in paragraph (d).

Shares held jointly

(3) For the purposes of sections 38 to 41, where a share of the capital stock of a company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident. 1964-65, c.40, s.30.

Limit on shares held by non-residents

Sec. 38. (1) The directors of a company shall refuse to allow in the book or books referred to in section 35 the entry of a transfer of any share of the capital stock of the company to a non-resident

- (a) if, when the total number of shares of the capital stock of the company held by non-residents exceeds twenty-five per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by non-residents;
- (b) if, when the total number of shares of the capital stock of the company held by non-residents is twenty-five per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the total number of such shares of stock held by non-residents to exceed twenty-five per cent of the total number of issued and outstanding shares of such stock;
- (c) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds ten per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any; or
- (d) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is ten per cent or less of the total number of issued and outstanding shares of such stock,



the entry of the transfer would cause the number of such shares of stock held by the non-resident and by other shareholders associated with him, if any, to exceed ten per cent of the issued and outstanding shares of such stock.

#### Allotment to non-resident

(2) The directors of a company shall not, after the day of commencement of the first general meeting of the shareholders of the company, allot, or allow the allotment of, any shares of the capital stock of the company to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in such book or books would be required, under subsection (1), to be refused by the directors.

#### Penalty

(3) Default in complying with this section does not affect the validity of a transfer or allotment of a share of the capital stock of the company that has been entered in the book or books referred to in section 35, but every director who knowingly authorizes or permits such default is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both. 1964-65, c.40, s.30.

#### Voting rights of nominees

Sec. 39. (1) Where a resident holds shares of the capital stock of a company in the right of, or for the use or benefit of, a non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

(2) Subject to subsection 41 (3), where any shares of the capital stock of a company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of

- (a) any shareholders associated with the non-resident, or
- (b) any persons who would, under subsection 37 (2), be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number ten per cent of the issued and outstanding shares of such stock.

#### Penalty

3) Every person who knowingly contravenes a provision of this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

#### Definitions

Sec. 41. (1) In this section,

##### Associates of the non-resident

"associates of the non-resident" means, with reference to any particular day.

- (a) any shareholders associated with the non-resident on that day, and
- (b) any persons who would, under subsection 37 (2), be deemed to be shareholders associated with the non-resident on that day were such persons and the non-resident themselves shareholders;

Prescribed day

"Prescribed day" means

- (a) the 23rd day of September 1964, in the case of a trust company to which that Act applies that was such a company on that date,
- (b) the day of commencement of the first general meeting of the shareholders of the company, in the case of a trust company to which this Act applies and incorporated after the 23rd day of September 1964, and
- (c) the day of the issue of letters patent pursuant to section 6.1, in the case of a corporation continued as a corporation pursuant to that section;

Shares held by or for the non-resident

"shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident on that day.

Exception for non-resident ownership

(2) Where more than fifty per cent of the issued and outstanding shares of the capital stock of a company are held in the name or right of or for the use or benefit of one non-resident at the commencement of the prescribed day, sections 38 to 40 do not apply to or in respect of that company; but if at any time thereafter there is no one non-resident in whose name or right or for whose use or benefit more than fifty per cent of the issued and outstanding shares of the capital stock of the company are held, those sections apply from and after that time to and in respect of that company.

Exception for individual non-resident

(3) Where at the commencement of the prescribed day the number of shares of the capital stock of a company held in the name or right of or for the use or benefit of a non-resident together with the number of such shares, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the non-resident exceed ten per cent of the number of shares of such stock at that time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the non-resident may notwithstanding subsection 39 (2) be exercised, in person or by proxy, so long as the percentage of such shares held by or for the non-resident and associates does not exceed either the percentage of such shares held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 39 does not apply.

Change of status of corporate resident

(4) Where after, the 17th day of March 1965 a corporation that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 38 and 39, to be shares held by a resident for the use or benefit of a non-resident.

Stock splits

(5) Where on or after the prescribed day the par value of shares of the capital stock of the company is reduced, the directors of the company may, notwithstanding subsection 38 (2), allot shares of the capital stock of the company of the reduced par value to a non-resident who is a shareholder in exchange for shares of such stock of the unreduced par value, but not so as thereby to effect an increase in the aggregate par value of the shares of such stock held by the non-resident.

Transferring beneficial holding

(6) The directors of a company may, notwithstanding section 38, allow in the book or books referred to in section 35 the entry of a transfer of any share of the capital stock of the company from a resident to a non-resident where it is shown to the directors on evidence satisfactory to them that the share was at the commencement of the prescribed day held by the resident in the right of or for the use or benefit of the non-resident.

Entry after prescribed day

(7) If at any time on or after the prescribed day and before the 18th day of March 1965 the directors of a company allow, in the book or books referred to in section 35, the entry of any transfer or allotment of any share of the capital stock of the company to a non-resident that they would have been required to refuse or prevent under section 38 had that section come into force on the prescribed day, no person shall, as proxy or in person, exercise the voting rights pertaining to such share so long as the share is held in the name or right of or for the use or benefit of any non-resident.

Conclusions reached by directors re resident or non-resident status

(9) In determining for the purposes of sections 37 to 41 whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of the company may rely upon any statements made in any declarations submitted under section 40 or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1964-65, c.40, s.30.

Source: "Trust Companies Act", Revised Statutes of Canada 1970, Chapter T-16, Queen's Printer, Ottawa, 1970

"Trust Companies Act", Revised Statutes of Canada, 1970, 1st Supplement, Chapter 47, Queen's Printer, Ottawa, 1970.

INVESTMENT COMPANIES ACT

Qualifications of Auditor

Sec. 6. (1) The auditor of an investment company shall, at the time of his appointment, be

- (a) an accountant who
  - (i) is a member in good standing of an institute or association of accountants incorporated by or under the authority of the legislature of a Province,
  - (ii) is ordinarily resident in Canada;  
and
  - (iii) has practised his profession in Canada continuously during the six consecutive years immediately preceding his appointment; or
- (b) a firm of accountants of which one or more members is qualified in accordance with paragraph (a).

LIMITATIONS ON TRANSFERS OF SHARES

Definitions

Sec. 10. (1) In this section and sections 11 to 17,

Corporation

- (a) "corporation" includes an association, partnership or other organization;

Non-resident

- (b) "non-resident" means
  - (i) an individual who is not ordinarily resident in Canada,
  - (ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
  - (iii) a corporation that is controlled directly or indirectly by non-residents as defined in subparagraph (i) or (ii).
  - (iv) a trust established by a non-resident as defined in subparagraph (i), (ii) or (iii), or a trust in which non-residents as so defined have more than fifty per cent of the beneficial interest, or
  - (v) a corporation that is controlled directly or indirectly by a trust mentioned in subparagraph (iv);

Resident

- (c) "resident" means an individual, corporation or trust that is not a non-resident; and

Sales Finance Company

- (d) "sales finance company" means an investment company at least twenty-five per cent of the assets of which, valued in accordance with the regulations, consist of
- (i) loans, whether secured or unsecured, made by the company, or
  - (ii) purchases by the company of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange, promissory notes or other obligations representing part or all of the sale price of merchandise or services;

and the value of assets of an investment company deemed by subsection (4) of section 2 not to be assets that consist of loans described in subparagraph (i) of paragraph (b) of subsection (1) of section 2 shall not be included in calculating the aggregate value of its assets described in subparagraphs (i) and (ii) of this paragraph.

Shares held jointly

- (4) For the purposes of sections 11 to 14, where a share of the capital stock of a sales finance company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

Limit on shares held by non-residents

Sec. 11 (1) The directors of a sales finance company shall refuse to allow, in the book or books required by the Canada Corporations Act to be kept by the company, the entry of a transfer of any share of a class of shares of the capital stock of the company to a non-resident

- (a) if, when the total number of shares of that class of shares of the capital stock of the company held by non-residents exceeds twenty-five per cent of the total number of issued and outstanding shares of such class, the entry of the transfer would increase the percentage of shares of such class held by non-residents;
- (b) if, when the total number of shares of that class of shares of the capital stock of the company held by non-residents is twenty-five per cent or less of the total number of issued and outstanding shares of such class, the entry of the transfer would cause the total number of shares of such class held by non-residents to exceed twenty-five per cent of the total number of issued and outstanding shares of such class;
- (c) if, when the total number of shares of that class of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds ten per cent of the total number of issued and outstanding shares of such class, the entry of the transfer would increase the percentage of shares of such class held by the non-resident and by other shareholders associated with him, if any; or
- (d) if, when the total number of shares of that class of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is ten per cent or less of the total number of issued and outstanding shares of such class, the entry of the transfer would cause the number of shares of such class held by the non-resident and by other shareholders associated with him, if any, to exceed ten per cent of the issued and outstanding shares of such class.

Allotment to non-resident

(2) The directors of a sales finance company shall not allot, or allow the allotment of, any shares of the capital stock of the company to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in the book or books required by the Canada Corporations Act to be kept by the company would be required, under subsection (1), to be refused by the directors.

Penalty

(3) Default in complying with the provisions of this section does not affect the validity of a transfer or allotment of a share of the capital stock of the company that has been entered in the book or books required by the Canada Corporations Act to be kept by the company, but every director who knowingly authorizes or permits such default is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Voting rights of nominees suspended

Sec. 12. (1) Where a resident holds shares of the capital stock of a sales finance company in the right of or for the use or benefit of a non-resident, the resident shall not, either in person or by proxy, exercise the voting rights pertaining to those shares.

Voting rights of non-residents

(2) Subject to subsection (3) of section 14, where any shares of a class of shares of the capital stock of a sales finance company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of shares of such class so held, together with shares of such class held in the name or right of or for the use or benefit of

- (a) any shareholders associated with the non-resident, or
- (b) any persons who would, under subsection (2) of section 10, be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number ten per cent of the issued and outstanding shares of such class.

Penalty

(3) Every person who knowingly contravenes a provision of this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Definitions

Sec. 14. (1) In this section,

Associates of the non-resident

- (a) "associates of the non-resident" means, with reference to any particular day,

- (i) any shareholders associated with the non-resident on that day, and

- (ii) any persons who would, under subsection (2) of section 10, be deemed to be shareholders associated with the non-resident on that day were such persons and the non-resident themselves shareholders;

Prescribed day

- (b) "prescribed day" means,

- (i) the 17th day of October, 1969, in the case of a company that would have been a sales finance company within the meaning of paragraph (d) of subsection (1) of section 10, on that day if this Act had then been in force,
  - (ii) in the case of a company incorporated on or after the 17th day of October, 1969, but before the coming into force of this Act, the day it would have become a sales finance company within the meaning of paragraph (d) of subsection (1) of section 10, if this Act had been in force on that day,
  - (iii) in the case of a sales finance company that ceases to be such a company after the coming into force of this Act and again becomes a sales finance company, the day on which it last became a sales finance company, and
  - (iv) in any other case, the day on which the company becomes a sales finance company; and
- (c) "shares held by or for the non-resident and associates" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the non-resident and associates of the non-resident and associates of the non-resident on that day.

Exception for non-resident ownership of company

(2) Where more than fifty per cent of the issued and outstanding shares of the capital stock of a sales finance company to which are attached voting rights exercisable under all circumstances are held in the name or right of or for the use or benefit of one non-resident at the commencement of the prescribed day, sections 11 to 13 do not apply to or in respect of that company; but if at any time thereafter there is no one non-resident in whose name or right or for whose use or benefit more than fifty per cent of the issued and outstanding shares of the capital stock of the company to which are attached voting rights exercisable under all circumstances are held, those sections apply from and after that time to and in respect of that company.

Exception for individual non-resident

(3) Where at the commencement of the prescribed day the number of shares of a class of shares of the capital stock of a sales finance company held in the name or right of or for the use or benefit of a non-resident together with the number of shares of such class, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the non-resident exceed ten per cent of the number of shares of such class at that time issued and outstanding, the voting rights pertaining to all shares of such class held in the name or right of or for the use or benefit of the non-resident may notwithstanding subsection (2) of section 12 be exercised, in person or by proxy, so long as the percentage of shares of such class held by or for the non-resident and associates does not exceed either the percentage of shares of such class held by or for the non-resident and associates at the commencement of the prescribed day or the smallest percentage of shares of such class held by or for the non-resident and associates on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 12 does not apply.

#### Change of Status of corporate resident

(4) Where after the coming into force of this Act a corporation that was at any time a resident becomes a non-resident any shares of the capital stock of the sales finance company acquired by the corporation while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 11 and 12, to be shares held by a resident for the use or benefit of a non-resident.

#### Transferring beneficial holding

(5) The directors of a sales finance company may, notwithstanding section 11, allow in the book or books required by the Canada Corporations Act to be kept by the company, the entry of a transfer of any share of the capital stock of the company from a resident to a non-resident where it is shown to the directors on evidence satisfactory to them that the share was at the commencement of the prescribed day held by the resident in the right of or for the use or benefit of the non-resident.

#### Entry after prescribed day

(6) If at any time on or after the 17th day of October, 1969, and before the coming into force of this Act the directors of a sales finance company allow, in the book or books required by the Canada Corporations Act to be kept by the company, the entry of any transfer or allotment of any share of the capital stock of the company to a non-resident that they would have been required to refuse or prevent under section 11 had this Act come into force on the 17th day of October, 1969, no person shall, as proxy or in person, exercise the voting rights pertaining to such share so long as the share is held in the name or right of or for the use or benefit of any non-resident.

#### Conclusion reached by directors

(8) In determining for the purposes of sections 10 to 13 and this section whether a person is a resident or non-resident, by whom a corporation is controlled, or any other circumstances relevant to the performance of their duties under those sections, the directors of a sales finance company may rely upon any statements made in any declaration submitted under section 13 or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

#### Sale of undertaking

Sec. 15. A sales finance company to or in respect of which sections 11 to 13 apply shall not sell or otherwise dispose absolutely of the whole or any substantial part of its undertaking, and the sale or disposal is of no effect, unless and until it has been approved by the Minister, if, in the opinion of the Minister, it would be likely to result directly or indirectly in the acquisition of the whole or any substantial part of the undertaking by a non-resident.



CANADA CORPORATIONS ACT

Definition of constrained share company

Sec. 41.1 (1) In this section "constrained-share company" means a public company that is declared by its letters patent or supplementary letters patent to be a constrained-share company.

Declaration by letters patent

(2) The letters patent or supplementary letters patent of a public company may declare the company to be a constrained-share company when the company is one in respect of which any class or description of persons may not have a significant or controlling interest, directly or indirectly, in its shares or any class or classes thereof if

- (a) the company is to qualify under any other Act of the Parliament of Canada or any regulations thereunder
  - (i) for any licence or permit to carry on or continue its undertaking or any part thereof in Canada, or
  - (ii) as a Canadian newspaper or periodical, or
- (b) any other company in which the company has a direct or indirect interest through the holding of shares in other corporations is to qualify
  - (i) under any Act of the Parliament of Canada or any regulation thereunder for any licence or permit to carry on or continue its undertaking or any part thereof in Canada, or
  - (ii) as a Canadian newspaper or periodical under any Act of the Parliament of Canada.

(3) The letters patent or supplementary letters patent of a public company may declare the company to be a constrained-share company when the company is one that is incorporated with the objects of investing in the shares of other corporations and it has a significant or controlling interest directly or indirectly through the holding of shares in a federally incorporated trust, insurance, loan, small loans or sales finance company.

Application for supplementary letters patent

(4) An application for supplementary letters patent declaring a public company to be a constrained-share company shall not be acted upon unless the application is approved by at least three-fourths of the votes cast at a special general meeting of the shareholders called for the purpose.

Special provisions

(5) Notwithstanding any other provision of this Act, the Special Provisions Applicable to Constrained-share Companies set out in the Schedule apply in respect of a constrained-share company.

Disclosure of company's status

(6) When a company becomes a constrained-share company, the company shall thereafter disclose that it is a constrained-share company and in what respect it is a constrained-share company in

- (a) any share certificates issued by the company,
- (b) any offer made to the public of its securities and any prospectus or document of a similar nature issued by the company in respect of its securities,
- (c) any proxy form or proxy information circular sent to the shareholders, and
- (d) any financial statements of the company sent to the shareholders.

Penalty

(7) Every person who, being a director, officer, employee or agent of a constrained-share company, knowingly authorizes or permits a violation of any provision of section 2, 3 or subsection 7 (1) of the Special Provisions Applicable to Constrained-share Companies set out in the Schedule is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

(8) Every person who knowingly violates any provision of section 5 of the Special Provisions Applicable to Constrained-share Companies set out in the Schedule is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

(9) A company that contravenes subsection (6) of this section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

"SCHEDULE"

SPECIAL PROVISIONS APPLICABLE  
TO CONSTRAINED-SHARE  
COMPANIES

Definitions

1. (1) In these provisions,

Associates

"associates" means, with reference to any person,

- (a) any shareholders associated with that person, and
- (b) any persons who would, under subsection (3), be deemed to be shareholders associated with that person if both he and such persons were shareholders;

Canadian

"Canadian" means

- (a) a Canadian citizen,

- (b) a partnership of which a majority of the members are Canadian citizens and in which interests representing in value more than fifty per cent of the total value of the partnership property are beneficially owned by Canadian citizens,
- (c) a trust established by a Canadian citizen or a trust in which Canadians, as defined in this paragraph have more than fifty per cent of the beneficial interest,
- (d) Her Majesty in right of Canada or a province, or
- (e) a body corporate
  - (i) that is incorporated under the laws of Canada or a province,
  - (ii) of which the chairman or other presiding officer and at least a majority of the directors or other similar officers are Canadian citizens, and
  - (iii) of which, if it is a body corporate having share capital, more than fifty per cent of the shares or class of shares to which are attached voting rights exercisable under all circumstances are held by Canadian citizens or by corporations other than corporations controlled directly or indirectly by persons who are not Canadians within the meaning of this paragraph;

#### Constrained-class

"constrained-class" refers to the class or description of persons whose significant or controlling interest in the shares or class of shares of a corporation would

- (a) preclude the corporation or any corporation in which it has a direct or indirect interest through the holding of shares in other corporations, as the case may be, from qualifying for any licence or permit pursuant to any Act described in subsection 41.1 (2), or
- (b) preclude, under an Act of the Parliament of Canada, the exercise of the voting rights attached to any shares of a federally incorporated trust, insurance loan, small loans or sales finance company held by that corporation, or any other corporation in which it holds shares, at a meeting of the shareholders of such trust, insurance, loan, small loans or sales finance company;

but if the "constrained-class" pursuant to that Act are non-residents or non-Canadians and the expression is not defined in that Act or any regulation thereunder, the expression "non-resident" or "non-Canadian", as the case may be, has the meaning ascribed thereto by these provisions;

#### Corporation

"corporation" includes an association, partnership or other organization;

#### Gross prescribed percentage

"gross prescribed percentage" means, with reference to the total number of voting shares or class of voting shares of a company at any relevant time, that percentage of the total number of its voting shares, or class of voting shares, set out in its letters patent or supplementary letters patent, that is the maximum percentage of such shares that may be held in the aggregate by or for members of the constrained-class at that time;

Net prescribed percentage

"net prescribed percentage" means, with reference to the total number of voting shares or class of voting shares of a company at any relevant time, that percentage of the total number of its voting shares, or class of voting shares, set out in its letters patent or supplementary letters patent, that is the maximum percentage of such shares that may be held by or for any one member of the constrained-class at that time;

Non-Canadian

"non-Canadian" means a corporation, individual or trust that is not a Canadian;

Non-resident

"non-resident" means

- (a) an individual who is not ordinarily resident in Canada or a Canadian citizen,
- (b) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (c) a corporation, of which the majority of the directors, or persons occupying the position of directors by whatever name called, are non-residents as defined in subparagraph (a),
- (d) a trust established by a non-resident as defined in this paragraph or a trust in which non-residents as so defined have more than fifty per cent of the beneficial interest,
- (e) a corporation that is controlled, directly or indirectly, by one or more non-residents as defined in this paragraph, or
- (f) the government of a foreign state or political subdivision thereof or any agency thereof and Her Majesty, or agent of Her Majesty, in any right other than in right of Canada or a province;

Prescribed day

"prescribed day" means, in respect of a company that becomes a constrained-share company by supplementary letters patent, the day that the company becomes a constrained-share company;

Register

"register" means any register or branch register of transfers of shares of the capital of the company or any register of shareholders of the company, as the case may be;

Resident

"resident" means a corporation, individual or trust that is not a non-resident; and

Voting shares

"voting shares" means the shares or class of shares of a constrained-share company to which are attached voting rights exercisable under all circumstances and may include, if the letters patent or supplementary letters patent by which the company became a constrained-share company, so provide, the shares or classes of shares

- (a) to which are attached any right to vote upon the happening of a stated event,
- (b) that have attached thereto a right to vote upon the happening of a stated event and the right to vote has arisen and continues or
- (c) to which are attached a right to convert them into or exchange them for voting shares within the meaning of this paragraph.

Meaning of references to shareholding

- (1) For the purposes of these provisions,
  - (a) a shareholder of a constrained-share company is a person who, according to the register of the company, is the holder of one or more shares of the company and a reference in these provisions to the holding of a share by or in the name of a person or any description of person is a reference to his being the holder of the share according to that register;
  - (b) a reference to shares held by or for any person, description of person or class of persons refers to the shares held in the name or right of, or for the use or benefit of,
    - (i) that person or description of person and the associates of that person, or
    - (ii) that class of persons and the associates of any persons or description of persons with the class,as the circumstance of the case requires; and
  - (c) where a share of the company is held jointly and one or more of the joint holders thereof is a member of the constrained-class, the share is deemed to be held by a member of the constrained-class.

Associated shareholding

- (3) For the purposes of these provisions, a shareholder is deemed to be associated with another shareholder if
  - (a) one shareholder is a corporation of which the other shareholder is an officer or director;
  - (b) one shareholder is a partnership of which the other shareholder is a partner;
  - (c) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder;
  - (d) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other shareholder;
  - (e) both shareholders are members of a voting trust where the trust relates to shares of the company;
  - (f) both shareholders are associated within the meaning of paragraphs (a) to (e) with the same shareholders; or
  - (g) both shareholders are parties to an agreement or arrangement, a purpose of which, in the opinion of the directors of the constrained-share company, is to require the shareholders to act in concert with respect to their interests in the company.

Association under the Crown

(4) For the purposes of these provisions, where a shareholder of the company is an agent of Her Majesty, in right of Canada or of a province, the shareholder shall be deemed to be associated with any other shareholder who is an agent of Her Majesty in the same right unless the letters patent or supplementary letters patent by which the company became a constrained-share company otherwise provide.

De facto control

(5) For the purposes of these provisions, a corporation is controlled by another corporation, individual or trust if it is in fact effectively controlled by such other corporation, individual or trust either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding of a significant portion of the preferred shares of a corporation or of the outstanding debt of a corporation or individual or by any other means whether of a like or different nature.

Saving

(6) Notwithstanding subsection (3),

- (a) where one shareholder who is not a member of the constrained-class and who, but for this paragraph, would be deemed to be associated with another shareholder, submits to the company a declaration stating that none of the shares of the company held by him or to be held by him is, or will be, to his knowledge, held in the right of, or for the use or benefit of, himself or any person with whom, but for this paragraph, he would be deemed to be associated, neither shareholder is deemed to be associated with the other so long as the shares of the company from time to time held by the shareholder who made the declaration are not held contrary to the statements made in the declaration;
- (b) two shareholders that are corporations and at least one of which is not a member of the constrained-class shall not be deemed to be associated with each other by virtue of paragraph 3 (f) by reason only that each shareholder is deemed under paragraph 3 (a) to be associated with the same shareholder; and
- (c) if the letters patent or supplementary letters patent by which the company became a constrained-share company so provide, where it appears from the register of the company that the total par value of shares, or the total number of shares, of the company held by a shareholder is not more than the value or number specified in the letters patent or supplementary letters patent for this purpose, he shall not be deemed to be associated with any other shareholder and no other shareholder shall be deemed to be associated with him.

Duty of directors

2. (1) The directors of a constrained-share company shall refuse to allow a transfer of a share of the company to be made or recorded in the register of the company
- (a) if, when the total number of voting shares of the company held by or for members of the constrained-class exceeds the gross prescribed percentage for the company, the transfer would increase the percentage of such shares held by or for members of the constrained-class;
  - (b) if, when the total number of voting shares of the company held by or for members of the constrained-class is equal to or less than the gross prescribed percentage for the company, the transfer would cause the total number of such shares held by or for members of the constrained-class to exceed the gross prescribed percentage;

- (c) if, when the total number of voting shares of the company held by or for a member of the constrained-class exceeds the net prescribed percentage for the company, the transfer would increase the percentage of such shares held by or for such member; or
- (d) if, when the total number of voting shares of the company held by or for a member of the constrained-class is equal to or less than the net prescribed percentage for the company, the transfer would cause the total number of such shares held by or for that member to exceed the net prescribed percentage.

#### Transfer by nominees

(2) Notwithstanding subsection (1), the directors of a constrained-share company may allow a transfer of any voting share of the company to be made or recorded in the register of the company where the transfer is to a member of the constrained-class, if it is shown to the directors on evidence satisfactory to them that the share was on the prescribed day held in the right of or for the use or benefit of the transferee.

#### Subscription for shares

3. (1) The directors of a constrained-share company shall not accept a subscription for a voting share of the company,
- (a) by any member of the constrained-class if, at the time the share is subscribed for, the total number of voting shares of the company held by or for the member of the constrained-class exceeds the net prescribed percentage for the company; and
  - (b) except as otherwise provided in subsection (2), in other circumstances where if the subscription were a transfer of the voting share the directors would be required under section 2 of these provisions to refuse to allow the transfer to be made or recorded; but in the case of a subscription pursuant to an offer of original unsubscribed capital stock, or of any increased capital stock of the company, to the shareholders of the company, the directors may count as shares issued and outstanding all the voting shares included in the offer to its shareholders.

#### Exception

- (2) Subject to paragraph 1 (a), where an offer of voting shares of the original unsubscribed capital stock, or of any increased capital stock, of a constrained-share company is made to its shareholders, the directors may accept any subscription.
- (a) if the terms of the offer contain provisions to the effect that in the case of a voting share offered to a shareholder who, at the time fixed for determining the shareholders to whom the offer is made, is not, to the knowledge of the directors, a member of the constrained-class, a subscription will not be accepted if the voting share is to be recorded in the name of a member of the constrained class;
  - (b) if the subscription is accompanied by a declaration by the subscriber stating that the person in whose name the voting share is to be recorded is not a member of the constrained-class; and
  - (c) if, on the basis of such declaration, the acceptance of the subscription is not contrary to the terms of the offer.

#### Effect of default

4. Default in complying with section 2 or 3 of these provisions does not affect the validity of a transfer of a share of the constrained-share company that has been made or recorded in the register of the company or the validity of the acceptance of a subscription for a share of the company.

#### Voting rights restricted

5. (1) Except as otherwise provided by section 7 of these provisions, where a person who is not a member of the constrained-class holds shares of a constrained-share company in the right of or for the use or benefit of a member of the constrained-class, such person shall not, in person or by proxy, exercise the voting rights pertaining to these shares.

(2) Except as otherwise provided by section 7 of these provisions, if the proportion of the shares of a constrained-share company held by or for a member of the constrained-class exceeds the net prescribed percentage for the company, no person shall, in person or by proxy, exercise the voting rights pertaining to any shares held in the name of the member of the constrained-class.

#### Exception

(3) Where it appears from the register of the company that the total par value of shares, or the total number of shares, of the company held by a shareholder is not more than the value or number specified for the purpose in the letters patent or supplementary letters patent by which the company became a constrained-share company, a person acting as proxy for the shareholder at a general meeting of the company is entitled to assume that the shareholder holds the shares in his own right and for his own use and benefit, unless the knowledge of the person acting as proxy is to the contrary.

#### No voting of shares of "taken-over" shareholder

(4) Where, after the commencement of the prescribed day of a constrained-share company, a corporation or trust that was at any time not a member of the constrained-class in respect of the shares of the company becomes a member of such constrained-class, the shares of the company acquired by the corporation or trust while it was not a member of the constrained-class and held by it while it is a member of that constrained-class shall not be voted at any meeting of the company.

#### Effect of contravention

(5) If a provision of this section is contravened at a general meeting of the shareholders of a company, no proceeding, matter or thing at that meeting is void by reason only of such contravention, but any such proceeding, matter or thing is, at any time within twelve months from the day of commencement of the general meeting at which the contravention occurred, voidable at the option of the directors of the company by a by-law duly passed by the directors and sanctioned by two-thirds of the votes cast at a special general meeting of the shareholders called for the purpose.

#### By-laws

6. (1) The directors of a constrained-share company may make such by-laws as they deem necessary to carry out the intent of these provisions and in particular, but without restricting the generality of the foregoing, the directors may make by-laws



- (a) requiring any person in whose name a share of the company is held to submit a declaration
  - (i) with respect to his direct or indirect ownership of any shares of the company,
  - (ii) whether the shareholder and any person in whose right or for whose use or benefit the share is held are residents,
  - (iii) whether the shareholder is associated with any other shareholder;
  - (iv) whether he is a Canadian citizen,
  - (v) if the shareholder is a corporation or trust, information establishing that the shareholder is a resident; and
  - (vi) with respect to such other matters as the directors may deem relevant for the purposes of these provisions;
- (b) requiring any person desiring to have a transfer of a share to him made or recorded in the register of the company or desiring to subscribe for a share of the company to submit such declaration as may be required pursuant to this section in the case of a shareholder; and
- (c) providing for the determination of the circumstances in which any declarations shall be required, their form and the times at which they are to be submitted.

Where declaration pending

(2) Where pursuant to any by-law made under subsection (1) any declaration is required to be submitted by any shareholder or person in respect of the transfer of or subscription for any share, the directors may refuse to allow such transfer to be made or recorded in the register of the company or to accept such subscription until a declaration satisfactory to the directors has been submitted to them.

Reliance upon information

(3) In determining for the purposes of these statutory provisions whether a person is or is not a resident or a Canadian, whether an individual is a Canadian citizen, whether a corporation is directly or indirectly controlled by persons who are not residents or any other circumstances relevant to the performance of the duties of the directors under these provisions, the company and any director, officer, employee or agent of the company may rely upon any statements made in any declaration submitted under these provisions or rely upon the knowledge of any of the directors of such circumstances; and the company, directors, officers, employees or agents are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

Computing non-resident holdings

- (4) Where, for any of the purposes of these provisions, the directors require to establish the total number of voting shares of the company held by non-residents, the directors may calculate the total number of such shares held by non-residents to be the total of
- (a) the number of voting shares held by all shareholders whose recorded addresses are places outside Canada; and
  - (b) the number of voting shares held by all shareholders whose recorded addresses are places within Canada but who, to the knowledge of the directors, are non-residents;

and such calculation may be made as of a date not earlier than the prescribed day or four months before the day on which the calculation is made, whichever is the later date.

Limiting transfers to non-residents

(5) Where by any calculation made under subsection (4) the total number of voting shares held by non-residents is equal to or less than the gross prescribed percentage for the company, the number of voting shares, the transfer of which by residents to non-residents the directors may allow to be made or recorded in the register of the company, shall be so limited as not to increase the total number of voting shares held by non-residents to more than the gross prescribed percentage.

Exception for small holdings

(6) Notwithstanding section 2 of these provisions, where in the case of a transfer of any shares of the company to a transferee it appears that

- (a) the total par value of voting shares, or the total number of voting shares, of the company held by the transferee as shown by the register of the company at a date not more than four months earlier is not more than the value or number specified for the purpose in the letters patent or supplementary letters patent by which the company became a constrained-share company, and
- (b) the total par value of voting shares, or total number of voting shares, of the company included in the transfer and any voting shares acquired by the transferee after the date mentioned in paragraph (a) and still held by him as shown by the register of the company is not more than the value or number specified for the purpose in the letters patent or supplementary letters patent by which the company became a constrained-share company,

the directors are entitled to assume that the transferee is not and will not be associated with any member of the constrained-class and, unless the knowledge of the directors is to the contrary, that he is not a member of the constrained-class.

Constrained ownership of shares

7. (1) Notwithstanding section 2 or 3 of these provisions, where it is necessary for a constrained-share company to reduce the total percentage of its voting shares or of any class of its voting shares, held by or for members of the constrained-class after the prescribed day for either of the purposes described in subsection 41.1 (2), if at the commencement of the prescribed day the number of voting shares of the constrained-share company exceeded the prescribed percentage for the company, the directors, so long as the total number of voting shares held by or for all members of the constrained-class exceeds the gross prescribed percentage,

- (a) shall refuse to allow a transfer of a voting share of the company to a member of the constrained-class to be made or recorded in the register of the company; and
- (b) shall not accept a subscription for a voting share of the company by a member of the constrained-class.

Exception for individual holdings

(2) Where at the commencement of the prescribed day the number of voting shares of the company held by or for a member of the constrained-class exceeded the net prescribed percentage for the company, the voting rights pertaining to the shares held by or for that member may, notwithstanding section 5 of these provisions, be exercised, in person or by proxy, so long as the percentage of such shares held by or for such member does not exceed either the percentage of such shares held by or for him at the commencement of the prescribed day or the smallest percentage of such shares held by or for him on any subsequent day; but this subsection shall not be construed to prohibit the exercise of voting rights in circumstances where section 5 of these provisions does not apply."

Source: "Canada Corporations Act", Revised Statutes of Canada, 1970, 1st Supplement, Chapter 10, Queen's Printer, Ottawa, 1970.

NOTE: - See also page 38A, which was inserted through Amendment Number 3.

CANADA CORPORATIONS ACT (continued)

PART IV

COMPANIES CLAUSES

Interpretation

Definitions

Sec. 160. In this Part, and in any Act incorporating a company to which this Part applies and with which this Part is incorporated as hereinafter provided, and also in all Acts amending such Act,

"company"

"the company" or "a company" means a company incorporated under the Special Act;

"Special Act"

"Special Act" means any Act incorporating a company to which this Part applies, and with which this Part is so incorporated, and includes all Acts amending such Act;

Companies subject to this Part

Sec. 162. (1) Except as aforesaid, this Part applies to every joint stock company incorporated subsequently to the 22nd day of June 1869, by any Special Act of the Parliament of Canada for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends; and, so far as applicable to the undertaking and not expressly varied or excepted by the Special Act, this Part is incorporated with the Special Act and forms part thereof and shall be construed therewith as forming one Act.

Exception by charter

(2) Any of the provisions of this Part may be excepted from incorporation with the Special Act, for which purpose, it is sufficient to provide in the Special Act that the sections or subsections of this Part that is proposed so to except, referring to them by the numbers they bear, shall not be incorporated with the Special Act, and the Special Act shall be construed accordingly. R.S., c. 53, s. 150.

Provisional directors

Sec. 166. The persons named as such, in the Special Act, shall be the first or provisional directors of the company, and shall remain in office until replaced by directors duly elected in their stead. R.S., c. 53, s. 154.

Qualification of subsequent directors

Sec. 167. No person shall be elected as a director unless he is a shareholder owning shares absolutely in his own right, and not in arrear in respect of any call thereon; and the majority of the directors of the company so chosen shall, at all times, be persons resident in Canada, and subjects of Her Majesty, by birth or naturalization. R.S. c. 53, s. 155.

Source: "Canada Corporations Act" Revised Statutes of Canada 1970, Chapter C-32, Queen's Printer, Ottawa, 1970.

CANADA MINING REGULATIONS

Sec. 2 (1) These regulations apply to

- (a) lands in the Northwest Territories that are vested in the Crown or of which the government of Canada has the power to dispose, and
- (b) public lands as defined in the Public Lands Grants Act that are not within any province and for the sale, lease or other disposition of which there is no other provision in the law.

Leasing

Sec. 45 (5) A lease shall not be granted under this section

- (a) to a person unless the Minister is satisfied that he is a Canadian citizen over eighteen years of age and that he will be the beneficial owner of the interest to be granted;
- (b) to a corporation incorporated outside of Canada; or
- (c) to a corporation, unless the Minister is satisfied
  - (i) that at least fifty per cent of the issued shares of the corporation are beneficially owned by
    - (A) persons who are Canadian citizens,
    - (B) corporations that meet the qualifications set out in subparagraph (ii), or
    - (C) both such persons and corporations,
  - (ii) that the shares of the corporation are listed on a recognized Canadian stock exchange and that Canadians will have an opportunity of participating in the financing and ownership of the corporation, or
  - (iii) that the shares of the corporation are wholly owned by a corporation that meets the qualifications outlined in subparagraphs (i) or (ii) of this paragraph.

(6) No lease shall be issued, granted, renewed, assigned or transferred to any person who has not qualified under this section to be granted a lease.

Transfer of a mineral claim held under a lease

Sec. 58 (2) A lease may only be transferred to a person qualified under section 45 to be a holder of a lease.

Source: "Territorial Lands Act, Public Lands Grants Act, Canada Mining Regulations". The Canada Gazette, Part II, Vol. 95, No. 6, SOR/61-86, P.C. 1961-325, p. 303-353. Queen's Printer, Ottawa, 1961.

"Territorial Lands Act, Public Lands Grants Act". The Canada Gazette, Part II, Vol. 96, No. 14, SOR/62-249, P.C. 1964-968, p. 734-746, Queen's Printer, Ottawa, 1962.

"Territorial Lands Act". The Canada Gazette, Part II, Vol. 100, No. 4, SOR/66-80, P.C. 1966-214, p. 223, Queen's Printer, Ottawa, 1966.

CANADA OIL AND GAS LAND REGULATIONS

Exploratory Licences

Sec. 24. (1) Any individual who is twenty-one years of age or over may submit an application for a licence.

(2) Any corporation that is registered with the Registrar of Companies pursuant to the Companies Ordinance of the Northwest Territories may submit an application for a licence with respect to Canada lands within the Northwest Territories.

(3) Any corporation that is entitled to carry on business in any province may submit an application for a licence with respect to Canada lands outside the Northwest Territories.

(4) Every person who submits an application for a licence shall forward his application to the Chief or Oil Conservation Engineer, together with the fee set out therefor in Schedule A.

Sec. 25. (1) Upon receipt of an application referred to in section 24, the Chief or the Oil Conservation Engineer may issue a licence to the applicant.

(2) Every licence issued under subsection (1) expires on the thirty-first day of March next following the date on which it was issued.

(3) No person shall assign or transfer a licence and any purported assignment or transfer of a licence is void.

Permit

Sec. 33. (2) Notwithstanding subsection (1), where in the opinion of the Minister the public interest requires, a permit may be issued for part of a grid area or part of one half of a grid area, with respect to Canada lands other than Canada lands located in that part of Canada described in Schedule F.

(3) Any individual who is twenty-one years of age or over may submit

(a) an application for a permit pursuant to section 30; or

(b) a tender for the purchase of a permit pursuant to section 32.

(4) Any corporation that is registered with the Registrar of Companies pursuant to the Companies Ordinance of the Northwest Territories may, with respect to Canada lands within the Northwest Territories, submit

(a) an application for a permit pursuant to section 30; or

(b) a tender for the purchase of a permit pursuant to section 32.

(5) Any corporation that is entitled to carry on business in any province may, with respect to Canada lands outside the Northwest Territories, submit

(a) an application for a permit pursuant to section 30; or

(b) a tender for the purchase of a permit pursuant to section 32.

Sec. 55 (1) Upon application to the Minister, a permittee shall be granted an oil and gas lease.

(2) An oil and gas lease shall not be granted under this section

- (a) to a person unless the Minister is satisfied that he is a Canadian citizen over twenty-one years of age, and that he will be the beneficial owner of the interest to be granted;
- (b) to a corporation incorporated outside of Canada; or
- (c) to a corporation unless the Minister is satisfied
  - (i) that at least fifty per cent of the issued shares of the corporation is beneficially owned by persons who are Canadian citizens, or
  - (ii) that the shares of the corporation are listed on a recognized Canadian stock exchange and that Canadians will have an opportunity of participating in the financing and ownership of the corporation, or
  - (iii) that the shares of the corporation are wholly owned by a corporation that meets the qualifications outlined in sub-paragraph (i) or (ii) of this paragraph.

Transfer of Permit or Lease

Sec. 73. (1) No oil and gas lease shall be transferred to

- (a) a person to whom the granting of an oil and gas lease is prohibited under subsection (a) of section 55; or
- (b) to a corporation unless the corporation satisfies the Minister that persons who are Canadian citizens will have an opportunity of participating in the beneficial ownership of the corporation.

Source: "Territorial Lands Act, Public Lands Grants Act, Canada Oil and Gas Land Regulations, Canada Oil and Gas Drilling and Production Regulations", The Canada Gazette, Part II, Vol. 95, No. 12, SOR/61-253, P.C. 1961-797, p. 805-864, Queen's Printer, Ottawa 1961.

"Territorial Lands Act, Public Lands Grants Act, Canada Oil and Gas Land Regulations, Canada Oil and Gas Drilling and Production Regulations" The Canada Gazette, Part II, Vol. 103, No. 16, SOR/69-415, P.C. 1969-1584, p. 1165-1166, Queen's Printer, Ottawa, 1969.

NOTE: The Territorial Lands Act refers to lands in the Northwest Territories or in the Yukon Territory that are vested in the crown or of which the Government of Canada has power to dispose. (R.S.C. 1952, chap. 263, sect. 2(g)). The Public Lands Grants Act refers to lands belonging to Her Majesty in right of Canada and includes lands of which the Government of Canada has power to dispose (R.S.C. 1952, chap. 224, sect. 2(c), as amended by S.C. 1967/68 chap. 32, sect. 9).

NORTHERN MINERAL EXPLORATION ASSISTANCE REGULATIONS

Grants for Exploratory Work in Northern Canada

Sec. 3 (1) Upon the application therefor to the Minister by one or more persons described in subsection (2) who intend to do exploratory work on holdings in Northern Canada, the Minister may, subject to these Regulations, authorize the payment to such person or persons of a grant in respect of the program expenditure for that exploratory work.

(2) The persons referred to in subsection (1) are

- (a) any individual who satisfies the Minister that he is
  - (i) a Canadian citizen not less than 21 years of age, and
  - (ii) entitled by reason of beneficial ownership or lease or option agreement to enter on the holdings in respect of which the application is made and conduct thereon a program of exploratory work;
- (b) any corporation incorporated in Canada, other than a corporation described in paragraph (a) or (b) of subsection (3b) of section 83A of the Income Tax Act, that is either
  - (i) a private corporation whose issued and outstanding shares are beneficially owned
    - (A) by Canadian citizens
    - (B) by one or more corporations described in subparagraph (ii), or
    - (C) partly by Canadian citizens and partly by one or more public corporations described in subparagraph (ii),  
in a number that causes the total votes of the shares so owned to be not less than 50% of the total votes that could, under the voting rights attached to all the shares of the private corporation issued and outstanding, be voted by the holders thereof,
  - (ii) a public corporation whose common shares are listed on a Canadian stock exchange or are offered for sale in Canada to the public through a Canadian securities dealer, or
  - (iii) a corporation whose issued and outstanding shares are beneficially owned by one or more public corporations incorporated in Canada (whose shares are listed on a Canadian stock exchange or are offered for sale in Canada to the public through a Canadian securities dealer) in a number that causes the total votes of the shares so owned to be not less than 50% of the total votes that could, under the voting rights attached to all the shares of the corporation issued and outstanding, be voted by the holders thereof; and
- (c) any corporation incorporated in Canada and described in paragraph (a) or (b) of subsection (3b) of section 83A of the Income Tax Act
  - (i) that satisfies the Minister that, until the program of exploratory work in respect of which the application is made has been completed or discontinued, substantially all of its expenditures for exploratory work will, unless the Minister otherwise agrees, be made for exploratory work in Northern Canada,



- (ii) whose issued and outstanding shares are not beneficially owned by one or more other corporations described in the said paragraph (a) or (b) of subsection (3b) of section 83A of the Income Tax Act in any number that would cause the total votes of the shares so owned to be in excess of 15% of the total votes that could, under the voting rights attached to all the shares of the corporation issued and outstanding, be voted by the holders thereof, and
- (iii) that is a corporation described in subparagraph (i), (ii), or (iii) of paragraph (b).

Source: "Appropriation Acts". The Canada Gazette, Part II, Vol. 100, No. 17, SOR/66-404, P.C. 1966-1641, p. 1241-1251, Queen's Printer, Ottawa, 1966.

"Appropriation Act No. 9, 1966". The Canada Gazette, Part II, Vol. 101, No. 23, SOR/67-584, P.C. 1967-2223, p. 1816-1819, Queen's Printer, Ottawa, 1967.

NOTE: Northern Canada means

"All that part of Canada north of a line following the sixteenth parallel north latitude from the boundary of Alaska to Hudson Bay, thence along the low water mark of Hudson Bay to Cape Fullerton, thence to Cape Kendall on Southampton Island, thence along the south shore of Southampton Island to Seahorse Point, thence to Lloyd Point on Foxe Peninsula, thence along the low water mark of the southern part of Baffin Island to the southeastern tip of Baffin Island (including the adjacent islands), thence to the Savage Islands, thence to the northwest corner of Resolution Island, thence along the low water mark of the southern shore of Resolution Island to its southernmost point, and thence along parallel 61°18' north latitude to the easternmost boundary of Canada."

AN ACT TO AMEND THE INCOME TAX ACT

(NOTE: At date of writing, Royal Assent had been given to this Act, but it had not been proclaimed.)

Limitation re deduction of interest by certain corporations

Sec. 18. (4) Notwithstanding any other provision of this Act, in computing the income for a taxation year of a corporation resident in Canada from a business or property, no deduction shall be made in respect of that proportion of any amount otherwise deductible in computing its income for the year in respect of interest paid or payable by it on outstanding debts to specified non-residents that

(a) the amount, if any, by which

(i) the greatest amount that the corporation's outstanding debts to specified non-residents was at any time in the year,

exceeds

(ii) 3 times the aggregate of

(A) the corporation's paid-up capital limit (within the meaning of subsection 89(1)) at the commencement of the year,

(B) the amount that the corporation's designated surplus would be immediately after the commencement of the year, if control of the corporation (within the meaning of Part VII) had been acquired by another corporation at that time,

(C) the corporation's tax-paid undistributed surplus on hand at the commencement of the year,

(D) the corporation's 1971 capital surplus on hand at the commencement of the year, and

(E) the corporation's capital dividend account (within the meaning of subsection 89(1)) immediately after the commencement of the year,

is of

(b) the amount determined under subparagraph (a)(i) in respect of the corporation for the year.

Meaning of certain expressions in subsection (4)

(5) In subsection (4), "outstanding debts to specified non-residents" of a corporation at any particular time in a taxation year means the aggregate of amounts each of which is an amount outstanding at that time as or on account of a debt or other obligation to pay an amount,

(a) that was payable by the corporation to a person who was, at any time in the year,

(i) a shareholder of the corporation who, either alone or together with persons with whom the shareholder was not dealing at arm's length, owned 25% or more of the issued shares of any class of the corporation and who was

(A) a person not resident in Canada, or

(B) a non-resident-owned investment corporation, or

- (ii) a person described in clause (i)(A) or (B) who was not dealing at arm's length with a shareholder described in subparagraph (i), and
- (b) on which any amount in respect of interest paid or payable by the corporation is or would be, but for subsection (4), deductible in computing the corporation's income for the year.

Non-resident-owned investment corporation.

Sec. 133. (8)

- (d) "non-resident-owned investment corporation" means a corporation incorporated in Canada that, throughout the whole of the period commencing on the later of June 18, 1971 and the day on which it was incorporated and ending on the last day of the taxation year in respect of which the expression is being applied, complied with the following conditions:
  - (i) all of its issued shares and all of its bonds, debentures and other funded indebtedness were
    - (A) beneficially owned by non-resident persons (other than any foreign affiliate of a taxpayer resident in Canada).
    - (B) owned by trustees for the benefit of non-resident persons or their unborn issue, or
    - (C) owned by a non-resident-owned investment corporation, all of the issued shares of which and all of the bonds, debentures and other funded indebtedness of which were beneficially owned by non-resident persons or owned by trustees for the benefit of non-resident persons or their unborn issue, or by two or more such corporations;
  - (ii) its income for each taxation year ending in the period was derived from
    - (A) ownership of or trading or dealing in bonds, shares, debentures, mortgages, hypothecs, bills, notes, or other similar property or any interest therein,
    - (B) lending money with or without security,
    - (C) rents, hire of chattels, charterparty fees or remunerations, annuities, royalties, interest or dividends.
    - (D) estates or trusts, or
    - (E) disposition of capital property;
  - (iii) not more than 10% of its gross revenue for each taxation year ending in the period was derived from rents, hire of chattels, charterparty fees or charterparty remunerations;
  - (iv) its principal business in each taxation year ending in the period was not
    - (A) the making of loans, or
    - (B) trading or dealing in bonds, shares, debentures, mortgages, hypothecs, bills, notes or other similar property or any interest therein;
  - (v) it has, not later than 90 days after the commencement of its first taxation year commencing after 1971 elected in prescribed manner to be taxed under this section; and

- (vi) it has not, before the end of the last taxation year in the period, revoked in prescribed manner the election so made by it;

except that in no case shall a new corporation (within the meaning assigned by section 87) formed as a result of an amalgamation after June 18, 1971 of two or more predecessor corporations be regarded as a non-resident-owned investment corporation unless each of the predecessor corporations was, immediately before the amalgamation, a non-resident-owned investment corporation; and

N.R.O. deemed not to be Canadian or private corporation

Sec. 134. Notwithstanding any other provision of this Act, a non-resident-owned investment corporation that would, but for this section, be a Canadian corporation or private corporation shall be deemed not to be a Canadian corporation or private corporation, as the case may be, except for the purposes of subsection 83(1) and sections 87 and 219.

Person

Sec. 248. (1) In this Act, "person", or any word or expression descriptive of a person, includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends;

Non-resident

"Non-resident" means not resident in Canada;

Limitations re advertising expense

Sec. 19. (1) In computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a non-Canadian newspaper or periodical dated after December 31, 1965 for an advertisement directed primarily to a market in Canada.

(2) An issue or edition of an issue of any newspaper or periodical that is edited in whole or in part in Canada and printed and published in Canada and that was not on April 26, 1965 a Canadian newspaper or periodical shall be deemed, for the purposes of subsection (1), not to be an issue of a non-Canadian newspaper or periodical if

- (a) throughout the period of 12 months ending April 26, 1965 issues or editions of issues of that publication were being edited in whole or in part in Canada and printed and published in Canada at the usual intervals for issues of that publication and have since that date continued to be so edited, printed and published without interruption except for a reason other than the cessation of the business of publishing that publication; and
- (b) in the case of a periodical, the periodical is similar, in content and in respect of the class of readers to which it is directed, to the issues or editions of that periodical that were throughout the period of 12 months ending April 26, 1965 being edited in whole or in part in Canada and printed and published in Canada.

(3) Subsection (1) does not apply with respect to an advertisement in a special issue or edition of a newspaper that is edited in whole or in part and printed and published outside Canada if such special issue or edition is devoted to features or news related primarily to Canada and the publishers thereof publish such an issue or edition not more frequently than twice a year.

(4) Subsection (1) does not apply with respect to an advertisement in

- (a) a catalogue, or
- (b) any publication the principal function of which is the encouragement, promotion or development of the fine arts, letters, scholarship or religion.

#### Definitions

(5) In this section,

##### Canadian issue

- (a) "Canadian issue" means,
    - (i) in relation to a newspaper, an issue, including a special issue,
      - (A) the type of which, other than the type for advertisements or features, is set in Canada,
      - (B) the whole of which, exclusive of any comics supplement, is printed in Canada,
      - (C) that is edited in Canada by individuals resident in Canada, and
      - (D) that is published in Canada, and
    - (ii) in relation to a periodical, an issue, including a special issue,
      - (A) the type of which, other than the type for advertisements, is set in Canada,
      - (B) that is printed in Canada,
      - (C) that is edited in Canada by individuals resident in Canada, and
      - (D) that is published in Canada,
- but does not include an issue of a periodical
- (E) that is produced or published under a licence granted by a person who produces or publishes issues of a periodical that are printed, edited or published outside Canada, or
  - (F) the contents of which, excluding advertisements, are substantially the same as the contents of an issue of a periodical, or the contents of one or more issues of one or more periodicals, that was or were printed, edited or published outside Canada.

##### Canadian newspaper or periodical

- (b) "Canadian newspaper or periodical" means a newspaper or periodical the exclusive right to produce and publish issues of which is held by one or more of the following:
  - (i) a Canadian citizen,
  - (ii) a partnership of which at least 3/4 of the members are Canadian citizens and in which interests representing in value at least 3/4 of the total value of the partnership property are beneficially owned by Canadian citizens,

- (iii) an association or society of which at least  $\frac{3}{4}$  of the members are Canadian citizens,
- (iv) Her Majesty in right of Canada or a province, or a municipality in Canada, or
- (v) a corporation
  - (A) that is incorporated under the laws of Canada or a province,
  - (B) of which the chairman or other presiding officer and at least  $\frac{3}{4}$  of the directors or other similar officers are Canadian citizens, and
  - (C) of which, if it is a corporation having share capital at least  $\frac{3}{4}$  of the shares having full voting rights under all circumstances, and shares representing in the aggregate at least  $\frac{3}{4}$  of the paid-up capital, are beneficially owned by Canadian citizens or by corporations other than corporations controlled directly or indirectly by citizens or subjects of a country other than Canada;

Issue of a non-Canadian newspaper or periodical

- (c) "issue of a non-Canadian newspaper or periodical" means an issue that is not a Canadian issue of a Canadian newspaper or periodical.

Inadequate considerations

Sec. 69. (2) Where a taxpayer carrying on business in Canada has paid or agreed to pay, to a non-resident person with whom he was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, an amount greater than the amount (in this subsection referred to as "the reasonable amount") that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, the reasonable amount shall, for the purpose of computing the taxpayer's income from the business, be deemed to have been the amount that was paid or is payable therefor.

(3) Where a non-resident person had paid or agreed to pay, to a taxpayer carrying on business in Canada with whom he was not dealing at arm's length as price, rental, royalty or other payment for or for the use or reproduction of any property, or as consideration for the carriage of goods or passengers or for other services, an amount less than the amount (in this subsection referred to as "the reasonable amount") that would have been reasonable in the circumstances if the non-resident person and the taxpayer had been dealing at arm's length, the reasonable amount shall, for the purpose of computing the taxpayer's income from the business, be deemed to have been the amount that was paid or is payable therefor.

Small Business Deduction

Sec. 125. (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a Canadian-controlled private corporation, an amount equal to 25% of the least of

- (a) the amount, if any, by which
  - (i) the aggregate of all amounts each of which is the income of the corporation for the year from an active business carried on in Canada,

exceeds

- (ii) the aggregate of all amounts each of which is a loss of the corporation for the year from an active business carried on in Canada,
- (b) the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of
  - (i)  $\frac{10}{4}$  of the aggregate of amounts deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part, and
  - (ii) 2 times the aggregate of amounts deducted under subsection 126(2) from the tax for the year otherwise payable by it under this Part,
- (c) the corporation's business limit for the year, and
- (d) the amount, if any, by which the corporation's total business limit for the year exceeds its cumulative deduction account at the end of the immediately preceding taxation year,

except that in applying this section for a taxation year after the 1972 taxation year, the reference in this subsection to "25%" shall be read as a reference to "24%" for the 1973 taxation year, "23%" for the 1974 taxation year, "22%" for the 1975 taxation year, and "21%" for the 1976 and subsequent taxation years.

#### Amount of business limit and total business limit

(2) For the purposes of this section,

- (a) a corporation's "business limit" for a taxation year is \$50,000, and
- (b) its "total business limit" for a taxation year is \$400,000,

unless the corporation is associated in the year with one or more other Canadian-controlled private corporations in which case, except as otherwise provided in this section, its business limit for the year is nil and its total business limit for the year is nil.

#### Associated corporations

(3) Notwithstanding subsection (2), if

- (a) all of the Canadian-controlled private corporations of a group that are associated with each other in a taxation year have filed with the Minister in prescribed form an agreement whereby, for the purposes of this section,
  - (i) they allocate an amount to one or more of them for the taxation year and the amount so allocated, as the case may be, is \$50,000, and
  - (ii) they allocate an amount to one or more of them for the taxation year and the amount so allocated or the aggregate of the amounts so allocated, as the case may be, is \$400,000, and
- (b) the amount so allocated under subparagraph (a)(ii) to each such corporation for the taxation year is not less than that corporation's cumulative deduction account at the end of the immediately preceding taxation year,

the business limit for the year of each of the corporations is the amount so allocated to it under subparagraph (a)(i) and the total business limit for the year of each of the corporations is the amount so allocated to it under subparagraph (b)(ii).

Failure to file agreement

(4) If any of the Canadian-controlled private corporations of a group that are associated with each other in a taxation year has failed to file with the Minister an agreement as contemplated by subsection (3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under this Part, the Minister shall, for the purpose of this section,

- (a) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal \$50,000, and
- (b) allocate an amount to one or more of them for the taxation year, which amount or the aggregate of which amounts, as the case may be, shall equal \$400,000,

and in any such case, notwithstanding subsection (2), the business limit for the year of each of the corporations is the amount so allocated to it under paragraph (a) and the total business limit for the year of each of the corporations is the amount so allocated to it under paragraph (b).

Where two taxation years ending in same year

(5) Where a Canadian-controlled private corporation has 2 taxation years ending in the same calendar year (otherwise than by reason of a change made in the usual and accepted fiscal period of the corporation) and is associated in each of those taxation years with another Canadian-controlled private corporation that has only one taxation year ending in the calendar year, notwithstanding anything in this section, the business limit of the first-mentioned corporation under this Part for the second taxation year ending in the calendar year is nil.

Definitions

(6) In this section,

Canadian-controlled private corporation

- (a) "Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations or by any combination thereof; and

Cumulative deduction account

- (b) "cumulative deduction account" of a corporation at the end of any taxation year means the amount, if any, by which the aggregate of
  - (i) the corporation's taxable incomes for taxation years commencing after 1971 and ending not later than the end of the particular year, or
  - (ii)  $\frac{4}{3}$  of the amounts deductible under section 112 or subsection 113 (1) from the corporation's incomes for those yearsexceeds the aggregate of
  - (iii)  $\frac{4}{3}$  of the taxable dividends paid by the corporation in those years, and



- (iv) 4 times the amount, if any, by which the corporation's refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) at the end of the particular year exceeds its dividend refund (within the meaning assigned by subsection 129(1)) for the particular year.

Tax when corporation becomes a non-Canadian controlled private corporation

Sec. 190. Where at any time in a taxation year and after 1971 a corporation that was, at a previous time, a Canadian-controlled private corporation becomes a private corporation other than a Canadian-controlled private corporation, a tax of 25% is payable by the corporation under this Part for the year on the amount, if any, by which

- (a) its preferred-rate amount (within the meaning assigned by subsection 189(4) at that time,

exceeds

- (b) 4 times the amount, if any, by which the aggregate of amounts of tax under Part V payable by the corporation for previous taxation years exceeds the aggregate of amounts of tax under that Part refundable to the corporation for previous taxation years.

Payment of tax by instalments

Sec. 191. (1) Every corporation by which any tax under this Part is payable for a taxation year shall,

- (a) on or before the day on or before which it is required to file its return of income under Part I for the year,
  - (i) file a return for the year under this Part in prescribed form, and
  - (ii) pay to the Receiver General of Canada 1/5 of the tax under this Part payable by it for the year; and
- (b) on or before the day on or before which it is required to file its return of income under Part I for each of the 4 immediately following taxation years, pay to the Receiver General of Canada 1/5 of the tax under this Part payable by it for the year.

Interest

(2) Where a corporation by which any tax under this Part is payable for a taxation year has failed to pay all or any part of any instalments thereof on the day on or before which it was required to pay that instalment, it shall, on payment of the amount in default, pay interest at a prescribed rate per annum from the day on or before which it was required to make the payment to the day of payment.

Provisions applicable to Part

(3) Sections 151, 152 and 162 to 167, and Division J of Part I are applicable mutatis mutandis to this Part.

Tax on dividends from Canada of non-residents

Sec. 212. (2) Every non-resident person shall pay an income tax of 25% on every amount that a corporation resident in Canada pays or credits, or is deemed by Part I to pay or credit, to him as, on account or in lieu of payment of, or in satisfaction of a taxable dividend (other than a capital gains dividend within the meaning assigned by subsection 131(1) or 137 (7.1)) or a capital dividend.

Where degree of Canadian ownership

(3) Notwithstanding subsection (2), where the corporation referred to in that subsection has a degree of Canadian ownership in the taxation year of the corporation during which the dividend is so paid or credited to the non-resident person referred to therein, the tax payable by the non-resident person on the amount referred to therein is the percentage of that amount that is equal to the percentage at which the non-resident person would otherwise be taxed on that amount by virtue of subsection (2) and any other law of Canada other than this Act, minus 5% of that amount.

Degree of Canadian ownership defined

Sec. 257. (1) For the purposes of this Act, a corporation has a degree of Canadian ownership in a taxation year if throughout any 60-day period included in the 120-day period commencing 60 days before the first day of the year,

(a) the corporation complied with the following conditions:

(i) the corporation was resident in Canada,

(ii) either

(A) not less than 25% of the issued and outstanding shares of the corporation having full voting rights under all circumstances were owned by one or more individuals resident in Canada, one or more corporations controlled in Canada or a combination thereof, and equity shares representing in the aggregate not less than 25% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation were owned by one or more individuals resident in Canada, one or more corporations controlled in Canada, or a combination thereof, or (B) a class or classes of shares of the corporation having full voting rights under all circumstances were listed on a prescribed stock exchange in Canada, and it is established in prescribed manner that no one non-resident person and no one corporation that did not comply with clause (A) owned more than 75% of the issued and outstanding shares of the corporation having full voting rights under all circumstances, alone or in combination with any other person related to such non-resident person or such corporation at any time within the period, and a class or classes of equity shares of the corporation representing in the aggregate not less than 50% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation were listed on a prescribed stock exchange in Canada, and it is established in prescribed manner that no one non-resident person and no one corporation that did not comply with clause (A) owned equity shares representing in the aggregate more than 75% of that part of the paid-up capital of the corporation that was represented by all the issued and outstanding equity shares of the corporation, alone or in combination with any other person related to such non-resident person or such corporation at any time within the period, and

(iii) where the year commenced after 1964, the number of directors who were resident in Canada was not less than 25% of the total number of directors of the corporation;

- (b) the corporation complied with the conditions specified in subparagraphs (a)(i) and (iii) and was a subsidiary wholly-owned corporation subsidiary to a corporation that throughout the 60-day period complied with the conditions specified in paragraph (a) or (c); or
- (c) the corporation complied with the conditions specified in subparagraphs (a)(i) and (iii) and was a subsidiary controlled corporation
  - (i) of which equity shares representing at least 75% of that part of the paid-up capital of the corporation that is represented by all the issued and outstanding equity shares were owned by
    - (A) the corporation to which it was subsidiary,
    - (B) a corporation controlled in Canada, or
    - (C) an individual resident in Canada, or
    - (D) any combination of persons described in clause (A), (B) or (C), and
  - (ii) subsidiary to a corporation that throughout the 60-day period complied with the conditions specified in paragraph (a) or (b).

Tax on non-Canadian corporations carrying on business in Canada

Sec. 219. (1) Every corporation carrying on business in Canada at any time in a taxation year (other than a corporation that was, throughout the year, a Canadian corporation) shall, on or before the day on or before which it is required to file a return of income under Part I for the year, pay a tax under this Part for the year equal to 25% of the amount by which the aggregate of

- (a) the corporation's amount taxable (within the meaning given that expression in section 123) for the taxation year,
- (b) the amount claimed by the corporation under paragraph (h) for the immediately preceding taxation year, and
- (c) where the corporation was resident in Canada at any time in the year, the amount claimed under paragraph (i) for the immediately preceding taxation year,

exceeds the aggregate of,

- (d) where the corporation was, throughout the year, not resident in Canada, the lesser of
  - (i) the amount, if any, by which the aggregate of amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property that was not property used in the year in, or held in the year in the course of, carrying on business in Canada, exceeds the aggregate of amounts each of which is an allowable capital loss of the corporation for the year from a disposition of any such property, and

- (ii) the amount that would be determined under subparagraph (i) for the year if it were read without reference to the expression "that was not property used in the year in, or held in the year in the course of, carrying on business in Canada".
- (e) the tax payable by it under Part I for the year less, where the corporation was, at no time in the year, resident in Canada, that proportion thereof that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,
- (f) any income taxes payable by it to the government of a province in respect of the year (to the extent that such taxes were not deductible under Part I in computing its income for the year from businesses carried on by it in Canada) less, where the corporation was, at no time in the year, resident in Canada, that proportion thereof that the amount determined under paragraph (d) in respect of the corporation for the year is of the corporation's amount taxable for the year,
- (g) where the corporation was resident in Canada at any time in the year
  - (i) the amount deducted under section 126 from the tax for the year otherwise payable by the corporation under Part I, and
  - (ii)  $1/2$  of the lesser of the corporation's taxable income for the year and the amount, if any, by which
    - (A) the aggregate of such of its incomes for the year from businesses or properties and taxable capital gains for the year from dispositions of property as were from sources in countries other than Canadaexceeds
    - (B) the aggregate of such of its losses for the year from businesses or properties and its allowable capital losses for the year from dispositions of property as were from sources in countries other than Canada,
- (h) where the corporation was, at the end of the year, carrying on business in Canada, such amount as the corporation may claim for the year, not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada, and
- (i) where the corporation was resident in Canada at any time in the year, such amount as the corporation may claim for the year, not exceeding the amount, if any, by which
  - (i) the aggregate of dividends paid by it after it last became resident in Canada, while it was resident in Canada and before the end of the yearexceeds
  - (ii) the aggregate of amounts determined under subparagraph (g)(ii) in respect of the corporation for taxation years ending after it last became resident in Canada and not later than the end of the year.

Exempt corporations

(2) No tax is payable under this Part for a taxation year by a corporation that was, throughout the year,

- (a) a bank,
- (b) a corporation whose principal business was
  - (i) the transportation of persons or goods,
  - (ii) communications, or
  - (iii) mining iron ore in Canada, or
- (c) a corporation exempt from tax under section 149.

Non-resident insurers

(4) No tax is payable under subsection (1) for a taxation year by a non-resident insurer, but where it elects, in prescribed manner and within the prescribed time, to deduct, in computing its Canadian investment fund as of the end of the immediately following taxation year, an amount not greater than the amount, if any, by which

- (a) the amount of its Canadian investment fund as of the end of the year

exceeds

- (b) the amount, as determined for the purposes of the relevant authority, of such of the insurer's liabilities (other than liabilities in respect of amounts payable out of segregated funds) as of the end of the year as may reasonably be regarded to have been incurred by it in the course of carrying on its insurance businesses in Canada,

it shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount it has so elected to deduct.

Additional tax on non-resident insurer

(5) In addition to any tax payable by it under subsection (4), a non-resident insurer shall, on or before the day on or before which it is required to file a return under Part I for a taxation year, pay a tax for the year equal to 25% of the amount, if any, by which

- (a) the amount of its Canadian investment fund as of the end of the year

exceeds

- (b) the greater of the value, as of the end of the year, of the Canadian assets owned by it at that time and the value, as of a time not later than the day on or before which the insurer is required to file a return under Part I for the year, of the Canadian assets owned by it at that time.

Where election under ss. 138(9)

(6) Where a non-resident insurer has made an election under subsection 138(9) in respect of a taxation year, no tax is payable by it under subsection (4) or (5) for the year or the immediately preceding taxation year but the insurer shall, on or before the day on or before which it is required to file a return under Part I for the year, pay a tax for the year equal to 25% of the amount, if any, by which the amount that would, if the insurer had not so elected, be the insurer's Canadian investment fund as of the end of the year exceeds the value, as of the end of the year, of property of the insurer used by it in the year in, or held by it in the year in the course of, carrying on its insurance businesses in Canada.

PART III

Short title

7. The provisions of this Part may be cited as the Income Tax Application Rules, 1971.

Definitions

8. In this Part,

Amended Act

(a) "amended Act" means the Income Tax Act as amended by section 1; and

Former Act

(b) "former Act" means the Income Tax Act as it was before being amended by section 1.

Application of Parts

Application of s.1 of this Act

9. Subject to the provisions of the amended Act and subject to this Part, section 1 of this Act applies to the 1972 and subsequent taxation years.

Application of Part XIII of amended Act

10. (1) Part XIII of the amended Act is applicable to amounts paid or credited after 1971.

(2) Where before 1976 an amount is paid or credited or is deemed by Part I of the amended Act to be paid or credited to a non-resident person, for the purposes of computing the tax under Part XIII thereof payable by the non-resident person on the amount,

- (a) the references in subsections 212(1) and (2) thereof to "25%" shall be read as references to "15%";
- (b) the reference in subsection 214(7) thereof to "4/3" shall be read as a reference to "100/85"; and
- (c) the reference in subsection 212(5) thereof to "25%" shall be read as a reference to "10%".

Application of Part XIV of amended Act

11. (1) Part XIV of the amended Act is applicable to the 1972 and subsequent taxation years except that, in its application to the 1972 to 1975 taxation years, the references therein to "25%" shall be read as references to "15%".

(2) Where a corporation, other than a non-resident corporation, has a taxation year part of which is before and part of which is after the commencement of 1972, the tax payable by it under Part XIV of the amended Act for that taxation year is that proportion of the tax under that Part otherwise payable by it for the year that the number of days in that portion of the taxation year that is in 1972 is of the number of days in the whole taxation year.

(3) Where a corporation has a taxation year part of which is before and part of which is after the commencement of 1976, the tax payable by it under Part XIV of the amended Act for that taxation year is the aggregate of

- (a) 15% of that proportion of the amount on which tax under that Part is payable by it for the taxation year that the number of days in that portion of the taxation year that is in 1975 is of the number of days in the whole taxation year, and
- (b) 25% of that proportion of the amount on which tax under that Part is payable by it for the taxation year that the number of days in that portion of the taxation year that is in 1976 is of the number of days in the whole taxation year.

Deduction of interest by certain corporations

22. Notwithstanding section 9, subsections 18(4) to (7) of the amended Act are applicable to taxation years commencing after 1971.

Small business deduction for particular years

54. For the purposes of section 125 of the amended Act, where a corporation has a taxation year (in this section referred to as the "particular taxation year") part of which is before and part of which is after the commencement of any of the calendar years 1973, 1974, 1975 and 1976 (in this section referred to as the "particular calendar year"), the percentage referred to in subsection 125(1) of the amended Act for the particular taxation year is the percentage equal to the aggregate of

- (a) that proportion of the percentage so referred to for the particular taxation year that the number of days in that portion of the particular taxation year that is in the particular calendar year, is of the number of days in the whole of the particular taxation year, and
- (b) that proportion of the percentage so referred to for the taxation year immediately preceding the particular taxation year that the number of days in that portion of the particular taxation year that is in the calendar year immediately preceding the particular calendar year, is of the number of days in the particular taxation year.

Source: The House of Commons of Canada, Bill C-259 An Act to amend the Income Tax Act, as passed by the House of Commons 17th December, 1971, Third session, Twenty-Eighth Parliament, 19-20 Elizabeth II, 1970-71, Ottawa, Queen's Printer, 1971.

Note: It is understood that An Act to amend the Income Tax Act will be published as Chapter 63 of Revised Statutes of Canada, 1970.

TELESAT CANADA ACT

Definitions

Sec. 2. In this Act,

Statutory conditions

"statutory conditions" refers to the conditions set out in Schedule II;

Qualifications of Directors

Sec. 13. (1) Subject to subsection 88 (4) of the Canada Corporations Act, any Canadian citizen ordinarily resident in Canada is qualified to be a director of the company elected by the approved telecommunications common carriers who are holders of common shares of the company, and any Canadian citizen ordinarily resident in Canada who is

(a) not a member of the public service of Canada, and

(b) not an officer or director of an approved telecommunications common carrier

is qualified to be a director of the company elected by the holders of common shares of the company who are persons who fulfil the statutory conditions.

Disqualification of Directors

(2) An elected director ceases to be a director if he ceases to be qualified to be a director of the company elected by the shareholders of the company by whom he was so elected.

Determining "ordinarily resident in Canada"

(4) The company may prescribe rules for determining for the purposes of this Act when a person ceases to be ordinarily resident in Canada. 1968-69, c.51, s.13.

Officers of the Company

Sec. 16. (1) All officers of the company, including the president and any vice-presidents appointed pursuant to subsection 15 (1), shall be Canadian citizens, and no such officer shall be in receipt of a salary from any source other than the company or be a director or shareholder of an approved telecommunications common carrier.

Disqualification of Officers

(2) An officer of the company who contravenes subsection (1) thereupon ceases to be an officer of the company. 1968-69, c.51, s.16.

APPLICATION OF STATUTORY PROVISIONS

Application of Part IV of Canada Corporations Act

Sec. 29. Part IV of the Canada Corporations Act does not apply to the company. 1968-69, c.51, s.29.

SCHEDULE II

Conditions affecting the acquisition and holding of common shares by persons other than Her Majesty in right of Canada, corporations declared by statute to be agents of Her Majesty in right of Canada and approved telecommunications common carriers.

1. (1) Not more than twenty per cent of the outstanding common shares of the company held by persons other than Her Majesty, in right of Canada, corporations declared by statute to be agents of Her Majesty in right of Canada and approved telecommunications common carriers may be held by non-residents.



(2) A resident shall not hold common shares of the company in the right of, or for the use or benefit of, a non-resident.

2. No common shares of the company shall be subscribed for, purchased or held in the name or right of, or for the use or benefit of,

- (a) a director or officer of an approved telecommunications common carrier;
- (b) a corporation that is deemed for the purposes of these statutory conditions to be associated with an approved telecommunications common carrier; or
- (c) the government of a foreign state or any political sub-division thereof or an agent of the government of a foreign state or any political subdivision thereof.

3. The number of common shares of the company held in the name or right of or for the use or benefit of a person or Her Majesty in right of any province, together with the number of such shares held in the name or right of or for the use or benefit of

- (a) each shareholder associated with that person or Her Majesty in right of that province, and
- (b) each person who would be deemed under these statutory conditions to be associated with that person or Her Majesty in right of that province if each of such persons and that person or Her Majesty in right of that province were shareholders

may not exceed two and one-half per cent of the outstanding common shares of the company.

#### Definitions

4. (1) For the purposes of these statutory conditions,

##### Agent

- (a) "agent" means, in relation to the government of a foreign state or any political subdivision thereof, a person empowered to perform a function or duty on behalf of the government of the foreign state or political subdivision other than a function or duty in connection with the administration or management of the estate or property of an individual;

##### Corporation

- (b) "corporation" includes an association, partnership or other organization;

##### Non-Resident

- (c) "non-resident" means

- (i) an individual who is not ordinarily resident in Canada
- (ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada,
- (iii) the government of a foreign state or any political sub-division thereof, or an agent of either,
- (iv) a corporation that is controlled directly or indirectly by non-residents as defined in any of subparagraphs (i) to (iii),
- (v) a trust

- (A) established by a non-resident as defined in any of subparagraphs (ii) to (iv) other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or
- (B) in which non-residents as defined in any of subparagraphs (i) to (iv) have more than fifty per cent of the beneficial interest, or
- (vi) a corporation that is controlled directly or indirectly by a trust defined in subparagraph (v) as a non-resident; and

Resident

- (d) "resident" means an individual, corporation, trust or government that is not a non-resident.
- (2) For the purposes of these statutory conditions, a shareholder is, except as provided by section 5 of these statutory conditions, deemed to be associated with another shareholder if
  - (a) one shareholder is a corporation of which the other shareholder is an officer or director;
  - (b) one shareholder is a partnership of which the other shareholder is a partner;
  - (c) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder;
  - (d) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same government in Canada, foreign government or individual or corporation that controls the other shareholder;
  - (e) both shareholders are members of a voting trust where the trust relates to shares of the company;
  - (f) both shareholders are agents of Her Majesty in right of the same province or officials or corporations performing on behalf of Her Majesty in such right a function or duty in connection with the administration, management or investment of a fund established to provide compensation, hospitalization, medical care, annuity, pension or similar benefits to particular classes of individuals, or moneys derived from such a fund;
  - (g) both shareholders are associated within the meaning of paragraphs (a) to (f) with the same shareholder; or
  - (h) both shareholders are associated in any other manner declared by the by-laws to constitute them associated shareholders.

(3) For the purposes of these statutory conditions, a "shareholder" is a person other than Her Majesty in right of Canada, a corporation declared by statute to be an agent of Her Majesty in right of Canada or an approved telecommunications common carrier, who according to the books of the company is the holder of one or more common shares of the company and a reference in these statutory conditions to a share being held by or in the name of any person is a reference to his being the holder of the share according to the books of the company.

(4) For the purposes of these statutory conditions, a corporation is deemed to be associated with an approved telecommunications common carrier if, in circumstances where both the corporation and the approved telecommunications common carrier were shareholders, the corporation would be deemed to be a shareholder associated with the approved telecommunications common carrier.

(5) For the purposes of these statutory conditions where a share of the company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

(6) Where a corporation or trust that was at any time a resident becomes a non-resident, any shares of the company acquired by the corporation or the trust while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of these statutory conditions, to be shares held by a resident for the use or benefit of a non-resident.

5. Notwithstanding paragraphs 4 (2) (a) to (g) of these statutory conditions,

- (a) where one shareholder who is a resident and who, but for this paragraph, would be deemed to be associated with another shareholder submits to the company a declaration stating that none of the shares of the company held by him or to be held by him is or will be, to his knowledge, held in the right of, or for the use or benefit of, himself or any resident with whom, but for this paragraph, he would be deemed to be associated, neither shareholder is deemed to be associated with the other so long as the shares of the company from time to time held by the shareholder who made the declaration are not held contrary to the statements made in the declaration;
- (b) two shareholders that are corporations and residents shall not be deemed to be associated with each other by virtue of paragraph 4 (2) (f) of these statutory conditions by reason only that each is deemed under paragraph 4 (2) (a) to be associated with the same shareholder; and
- (c) where it appears from the register of shareholders of the company that not more than five hundred common shares of the company are held by a shareholder, he shall not be deemed to be associated with any other shareholder and no other shareholder shall be deemed to be associated with him. 1968-69, c.51, Sch. B.

CANADA DEVELOPMENT CORPORATION ACT

Qualification of directors

Sec. 12. (1) Subject to section 86 of the Canada Corporations Act, any Canadian citizen is qualified to be a director of the company if he otherwise qualifies under such by-laws as may be made in that regard.

Disqualification of directors

(2) A person ceases to be a director if he ceases to be a Canadian citizen.

Majority to be resident

(3) The majority of the members of the Board referred to in section 11 shall at all times be residents of Canada.

Voting Shares

Sec. 20. (1) No person other than an individual who is a Canadian citizen or a person who is a resident of Canada may purchase, own or hold voting shares of the company.

Generally

(2) No person may hold shares of the company unless he is qualified to be a shareholder under this Act or the by-laws.

Determining ordinarily resident in Canada

(3) The Board may prescribe rules for determining for the purposes of this Act when a person is not ordinarily resident in Canada.

SCHEDULE I

CONDITIONS AFFECTING THE ACQUISITION

AND HOLDING OF VOTING SHARES

1. No person shall purchase or hold voting shares of the company in the right of or for the use or benefit of a non-resident, unless such non-resident is an individual who is a Canadian citizen.

Definitions

4. (1) For the purposes of these statutory conditions,

Non-Resident

(c) "non-resident" means

- (i) an individual who is not ordinarily resident in Canada,
- (ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada.

- (iii) the government of a foreign state or any political subdivision thereof, or an agent of either,
- (iv) a corporation that is controlled directly or indirectly by non-residents as defined in this paragraph,
- (v) a trust
  - (A) established by a non-resident as defined in any of subparagraphs (ii) to (iv) other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or
  - (B) in which non-residents as defined in any of subparagraphs (i) to (iv) have more than fifty per cent of the beneficial interest, or
- (vi) a corporation, of which the majority of the directors, or persons occupying the position of directors by whatever name called, are non-residents as defined in subparagraph (i),
- (vii) a corporation that is controlled directly or indirectly by a trust defined in this paragraph as a non-resident; and

Resident

- (d) "resident" means an individual, corporation, trust or government that is not a non-resident.

(3) For the purposes of these statutory conditions, where a share of the company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.

(5) Where a corporation or trust that was at any time a resident becomes a non-resident, any shares of the company acquired by the corporation or the trust while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of these statutory conditions, to be shares held by a resident for the use or benefit of a non-resident.

AERONAUTICS ACT

REGULATIONS MADE UNDER THE  
AERONAUTICS ACT

200. No person shall fly an aircraft in Canada unless it is registered

- (a) under this Part, or
- (b) under the laws of a contracting state or a state that is party to an agreement entered into with Canada relating to interstate flying.

204. (1) No aircraft shall be registered under this Part unless,

- (a) it is a state aircraft or is owned exclusively by a person qualified under subsection (2) to be the registered owner of a Canadian aircraft;
- (b) there is in force in respect of the aircraft a certificate of airworthiness or a flight permit issued under this Part;
- (c) all duties due and payable under the laws of Canada in respect of the importation of the aircraft into Canada have been paid; and
- (d) the aircraft is not registered elsewhere than in Canada.

(2) For the purpose of paragraph (a) of subsection (1), a person is qualified to be the registered owner of a Canadian aircraft who is

- (a) a Canadian citizen,
- (b) a person, lawfully admitted to Canada for permanent residence who, since being so admitted, has been ordinarily resident in Canada for a period of not more than six years,
- (c) a corporation incorporated under the laws of Canada or any province, at least two-thirds of the directors of which are Canadian citizens, or
- (d) in the case of a private aircraft,
  - (i) a citizen or subject of a contracting state who normally resides in Canada, or
  - (ii) a corporation incorporated under the laws of Canada or a province.

208. (1) Where a Canadian aircraft that is a private aircraft is owned by other than a Canadian citizen or a corporation mentioned in paragraph (c) of subsection (2) of section 204, it shall not be operated outside Canada except in accordance with subsection (2).

(2) An aircraft described in subsection (1) may be operated outside Canada if

- (a) each period of absence of the aircraft from Canada does not exceed sixty days; and
- (b) the aggregate periods of absence of the aircraft from Canada do not exceed six months in any twelve-month period.

(57) "private aircraft" means a civil aircraft other than a commercial aircraft or a state aircraft;

Source: "Aeronautics Act, Air Regulations", The Canada Gazette, Part II  
Vol. 95, No. 1, SOR/61-10, P.C. 1960-1775, Pages 43-44.

CANADIAN CITIZENSHIP ACT

Definition

Sec. 2. "alien" means a person who is not a Canadian citizen, Commonwealth citizen, British subject or citizen of the Republic of Ireland;

Rights of Aliens

Sec. 24. (1) Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born Canadian citizen; and a title to real and personal property of every description may be derived through, from or in succession to an alien in the same manner in all respects as through, from or in succession to a natural-born Canadian citizen.

(2) This section does not operate so as to

- (a) qualify an alien for any office or for any municipal, parliamentary or other franchise;
- (b) qualify an alien to be the owner of a Canadian ship;
- (c) entitle an alien to any right or privilege as a Canadian citizen except such rights and privileges in respect of property as are hereby expressly given to him; or
- (d) affect an estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the 4th day of July 1883, or in pursuance of any devolution by law on the death of any person dying before that day, R.S., c. 33, s. 24.

Source: "Canadian Citizenship Act", Revised Statutes of Canada 1970, Chapter C-19, Queen's Printer, Ottawa 1970.



FOREIGN INVESTMENT REVIEW ACT

The whole of the Foreign Investment Review Act affects foreign investment in Canada. Consequently, no extracts are reproduced here.

The Act received Royal Assent on 12 December 1973. It was proclaimed on 9 April 1974, except for the provisions relating to the establishment of new businesses in Canada. These provisions will be brought into effect later.

The Act is Chapter 46 of the Statutes of Canada 1973. Copies can be obtained from Information Canada.

On 20 December 1973, preliminary guidelines with respect to whether a business is related, or not related, to another business were tabled in the House of Commons. News Release 79/73 of the Department of Industry, Trade and Commerce refers.

On 7 March 1974, the Foreign Investment Review Regulations were issued. These prescribe certain classes of persons as being non-eligible, contain rules for calculating gross assets and gross revenues, and specify the information which an applicant must supply when making a proposal to the Agency. The Regulations were published in Canada Gazette Part II, Vol. 108, No. 6 of 27 March 1974.

On 22 March 1974, Guidelines Concerning Real Estate Businesses were issued. In this connection, the Minister stated "Guidelines do not have the force of law. Accordingly, they are not conclusive. However, they do reflect my view as to when a foreign purchase of real estate would likely constitute an acquisition of Canadian business and thus be subject to the Act". News Release 21/74 of 22 March 1974 refers.

On 9 April 1974, the Terms and Conditions for the Venture Capital Exemption were issued. News Release 33/74 of 9 April 1974 refers.

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