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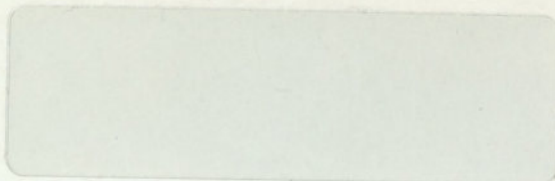
## *CAPSULE SUMMARY OF OPINIONS*



INVESTMENT  
CANADA

INVESTISSEMENT  
CANADA

ADCE  
2005



Acquisition of Control

1. Two shareholders with non-voting shares of a corporation desired to exercise conversion rights in those shares in order to exchange them for voting shares. This transaction resulted in the acquisition, by each shareholder, of 14.3% of the outstanding voting shares of the corporation. Since, pursuant to paragraph 78(3)(d), the acquisition of less than one-third of the voting shares of a corporation...

The Investment Canada Act authorizes the Minister, or the Minister's delegate, to issue opinions to investors concerning their status as a "Canadian" or on the applicability to the investor of any provision of the Act or Regulations.

For the assistance of investors and their advisors, this summary, in expurgated form, outlines the factual circumstances and basis for each of 52 opinions that have been provided under the Investment Canada Act from the time the Act came into force until April 30, 1986. This does not include opinions relating to the status of investors.

\*Canadian Business\*

It is expected that the publication of further opinions in similar format will be carried out as numbers permit.

2. The assets shown on the balance sheet of an entity which was being acquired, included certain assets which were being held in trust for or on behalf of third parties. In calculating the assets of the entity for the purposes of the thresholds in Section 14 of the Act, these assets were not included in the asset total of the entity.

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\*Value of Assets\*

3. The assets shown on the balance sheet of an entity which was being acquired, included certain assets which were being held in trust for or on behalf of third parties. In calculating the assets of the entity for the purposes of the thresholds in Section 14 of the Act, these assets were not included in the asset total of the entity.

June 30, 1986

July 13, 1987  
July 13, 1988

Acquisition of  
Control

1. Two shareholders with non-voting shares of a corporation desired to exercise conversion rights in those shares in order to exchange them for voting shares. This transaction resulted in the acquisition, by each shareholder, of 14.35% of the outstanding voting shares of the corporation. Since, pursuant to paragraph 28(3)(d), "the acquisition of less than one-third of the voting shares of a corporation ... is deemed not to be the acquisition of control of that corporation", neither shareholder, taken individually, acquired control of the corporation. Similarly, even if the shareholders were associated so as to form a "joint venture" as defined by the Act, the combined total of voting shares, 28.7%, also would not constitute acquisition of control pursuant to paragraph 28(3)(d).

July 19, 1985

"Canadian Business"

2. A non-Canadian acquired control, through the acquisition of voting shares, of a corporation incorporated in Canada whose sole assets consisted of a number of mining claims located in Ontario. The only work done on these claims had been some exploration activity, now completed. The acquisition of control of the corporation was not subject to the Investment Canada Act because it did not constitute the acquisition of control of a Canadian business. Section 3 of the Act requires that a "business" be "capable of earning revenue". Interpretation Note No. 4 states that mineral properties that are only at the exploration stage are not considered to be businesses. Accordingly, the mining claims in question could not be considered to be a business, and therefore, the transaction did not result in the acquisition of control of a Canadian business.

July 23, 1985

"Value of Assets"

3. The assets shown on the balance sheet of an entity, the control of which was being acquired, included certain amounts which were being held in trust for or on behalf of third parties. In calculating the assets of the entity for the purposes of the thresholds in section 14 of the Act these amounts were not included in the asset total of the entity.

July 23, 1985

"Canadian Business"

4. The only assets of an entity, the control of which was acquired, consisted of three oil and gas leases. Only one well had been drilled on these properties and it had been shut in since it was not economically viable. It was determined that the entity was not carrying on a business since the definition of a "business" in Section 3 of the Act requires that a "business" be "capable of generating revenue". Interpretation Note No. 4 on the meaning of "business" notes further that, with respect to oil and gas properties, this definition of "business" means that exploratory properties, as opposed to producing properties, do not constitute a business.

July 29, 1985

Related Business

5. A corporation incorporated in Canada had carried on a business in Canada for a number of years providing certain financial and insurance services. The business had been carried on through a number of locations located in various cities in Canada. The corporation proposed to carry on this business at an additional location. This new activity was determined to be the expansion of an existing business and not the establishment of a new Canadian business. The related business guidelines state that if "the new activity produces goods or services which are substantially similar to the goods or services produced by the existing business", it is considered to be the expansion of the existing business. As the expansion of an existing business, the new activity was, therefore, not subject to the Investment Canada Act.

July 29, 1985

Corporate Reorganization

6. A corporation that was a non-Canadian under the Investment Canada Act had an operating subsidiary in Canada which it controlled through the ownership of the majority of the subsidiary's shares. The non-Canadian corporation proposed to incorporate a new wholly-owned subsidiary and then transfer its interests in the Canadian subsidiary to the new corporation. This transaction was exempt from the Act pursuant to paragraph 10(1)(e). The transaction was a corporate reorganization following which ultimate control in fact directly or indirectly through the ownership of voting shares of the corporation carrying on the Canadian business had remained unchanged. The non-Canadian corporation which had been the ultimate controller in fact through the ownership of voting shares of the Canadian subsidiary remained, after the transaction, the ultimate controller in fact through the ownership of voting shares.

July 29, 1985

"Canadian Business";  
Related Business

7. A corporation incorporated in Canada which was a non-Canadian under the Investment Canada Act and which carried on business in Canada in the exploration for and development of uranium mining properties proposed to diversify its activities into areas of non-uranium mining. Initially, these activities would consist of exploration activities with possible future development of any properties found in that process. Since, in accordance with the definition of "business" and Interpretation Note No. 4, mining exploration activity is not considered to be a business, any such activities undertaken by the non-Canadian would be considered not to constitute a new Canadian business and, therefore, would not be subject to the Investment Canada Act. In the event that the non-Canadian developed a mining property into a producing non-uranium mine this would be considered to be a new Canadian business. Non-uranium mining is not considered to be related to uranium mining pursuant to the related business guidelines.

July 29, 1985

Acquisition of Control;  
inter vivos trust

8. A trust which was a non-Canadian under the Investment Canada Act held the shares of a corporation which in turn owned the shares of another corporation incorporated in Canada carrying on a Canadian business. The life beneficiary of the trust (which was for a term of fifteen years), who was also a trustee and exercised control of the trust, died. Her two non-Canadian descendants, who did not constitute a joint venture, thereupon became equally entitled to the income deriving from the trust and to the principal should they be surviving at the end of the fifteen year term. The change in beneficiaries was not subject to the Act as, pursuant to paragraph 28(3)(b), the acquisition of less than a majority of the voting interests of an entity other than a corporation is deemed not to be an acquisition of control of that entity. Further they did not associate themselves for the purpose of making the investment for the purpose of the definition "joint venture". Consequently, there was no acquisition of control of the trust by either non-Canadian descendant which would result in an indirect acquisition of control of a Canadian business. If there had been such an acquisition of control, the exemption found in paragraph 10(1)(e) would not have applied since the words "devolution of estate" do not include a transfer of an estate via an inter vivos trust.

July 29, 1985

Indirect Acquisition  
of Control

9. A corporation which was a non-Canadian within the meaning of the Investment Canada Act proposed to acquire two-thirds of the outstanding shares of a Canadian corporation. The Canadian corporation owned 50% of the shares of another corporation incorporated in Canada carrying on business in Canada. The remaining 50% was owned by an unrelated single Canadian corporate shareholder. Subparagraph 28(2)(b)(ii) provides that an entity controls a corporation with less than a majority of the voting shares if the entity controls the corporation in fact though the ownership of one-third or more of its voting shares. In this case, the Canadian corporation could not be considered to control in fact the corporation in which it had a 50% interest since another shareholder owned an equal interest. Accordingly, the acquisition by the non-Canadian of control of the Canadian corporation did not result in an indirect acquisition of control of the 50% owned corporation.

August 22, 1985

"Canadian Business"

10. An individual who was a non-Canadian proposed to acquire a majority of the shares of a Canadian public corporation whose shares were listed on the Vancouver and Toronto stock exchanges. While the corporation had various U.S. subsidiaries with extensive business operations, its only assets in Canada were small interests in various oil and gas producing properties. The corporation carried on no active business in Canada and its only employees in Canada performed purely administrative functions. The corporation, with only passive investments in Canada, could not be considered to be carrying on a "business" within the meaning of the Act. In any event, as there were no assets in Canada used in carrying on a business the corporation was not carrying on a "Canadian business" under the definition in the Act. Accordingly, the acquisition of a majority of shares of the corporation did not constitute the acquisition of control of a Canadian business and was not subject to the Act.

August 29, 1985

Acquisition of control;  
"Joint venture"

11. A widely-held corporation that was controlled by its board of directors, and was a non-Canadian under the Investment Canada Act, had a wholly-owned subsidiary in Canada which carried on a Canadian

business. The corporation proposed to distribute the shares of the subsidiary to the corporation's shareholders. It was determined that this transaction did not come within the purview of the Investment Canada Act. A "non-Canadian" must be either a person, a government agency or an entity. The shareholders of the corporation had not "associated" themselves for the purpose of acquiring these shares and could not be collectively acting as a joint venture. Neither were they a corporation, a partnership or a trust.

August 29, 1985

#### Step Transaction

12. A corporation that was a non-Canadian under the Investment Canada Act proposed to acquire temporary control of a Canadian-incorporated corporation carrying on a Canadian oil and gas business and subsequently sell the assets of the oil and gas corporation to another corporation which was a Canadian under the Act. The purpose of the non-Canadian corporation's involvement in the transaction was to enable it to offset substantial recapture of depreciation which would occur on the sale of the assets. A single agreement was entered into by all parties to the transaction. The non-Canadian corporation's temporary acquisition of control of the oil and gas corporation was not subject to the Act as it was not considered a separate investment for the purposes of section 14 of the Act. In effect, it was only one step in the transaction ultimately resulting in the acquisition of control of the oil and gas corporation by the Canadian corporation. This view of the transaction facilitates investment by Canadians and is consistent with the Purpose provision (section 2) of the Act and with the duties and powers of the Minister (section 5).

September 6, 1985

#### Transition

13. A non-Canadian obtained an allowance under the Foreign Investment Review Act with respect to its proposed acquisition of control of the Canadian business. The investment was actually implemented after the coming into force of the Investment Canada Act. It was determined that, while there was no specific transition provision to cover the circumstances and the investment would otherwise be subject to the Investment Canada Act due to its implementation under that Act, the provisions of the Interpretation Act indicate that the right to implement an investment acquired under the former Act is not affected by the repeal of that Act and that, therefore, the investor retained the right to implement its investment without further restriction.

September 6, 1985

"Canadian Business"

14. A non-Canadian limited partnership acquired substantially all of the assets of a division of a U.S. corporation, which division marketed recipe cards and children's books in the U.S. and Canada. At the time of the acquisition and for a few months prior, the division contracted with an independent Canadian to handle all mailing and administrative activities in Canada. The division, itself, had no assets in Canada. Although orders were taken in the name of and credited to a wholly-owned Canadian subsidiary of the U.S. parent, that subsidiary had no assets in Canada other than cash and accounts receivable. All operating assets in Canada including premises were provided by the Canadian contractor and all inventory was shipped from the U.S. The acquisition of the assets of the U.S. division did not amount to the acquisition of control of a Canadian business. The definition of "Canadian business" in section 3 requires that it have "assets in Canada used in carrying on the business". Since all of the operating assets were in the U.S. or belonged to an independent Canadian contractor, no "Canadian business" was acquired. Since the purchaser of the assets of the division carried on the business under the same arrangements as before, similarly, it could not be said that a new Canadian business was established.

September 16, 1985

Bank Act; exemption

15. A foreign bank requested an opinion that its acquisition of control of a Canadian corporation and its two Canadian subsidiaries would not be subject to the Investment Canada Act. The corporation is engaged in the business of providing venture capital in exchange for minority common and preferred shares. One of its subsidiaries carries on similar activities while the other is a dealer in securities. The foreign bank had filed a submission with the Inspector General of Banks on the grounds that the transaction came within the purview of the Bank Act pursuant to paragraph 307(1)(c) and would not be subject to the Investment Canada Act. An opinion was issued that the transaction was not subject to the Investment Canada Act as the principal activities of the corporation and its subsidiaries fell within the list of activities specified in paragraph 307(1)(c) of the Bank Act. Accordingly, the acquisition by the foreign bank of these corporations came within the jurisdiction of the Bank Act.

September 24, 1985

"Canadian business"

16. A non-Canadian corporation submitted an application for an opinion that its acquisition of all the issued and outstanding common shares of a Canadian corporation with mining interests in the United States



was not subject to the Investment Canada Act. The Canadian corporation maintains an office in Vancouver, B. C. for administrative purposes, but all of its business activities are conducted in the U.S. primarily through a wholly-owned subsidiary incorporated in Nevada. An opinion was issued that the acquisition of control was not subject to the Act as the Canadian corporation is not carrying on a "Canadian business" within the meaning of the definition. Specifically, it has no assets in Canada used in carrying on a business. In effect, it does not even carry on a "business" in Canada, as it is not engaged in Canada in an undertaking or enterprise capable of generating revenue.

October 3, 1985

#### Transition

17. A non-Canadian obtained an allowance under the FIR Act to acquire control of a Canadian business. It had acquired 50% of the shares of the corporation carrying on the Canadian business and held a right to acquire the remaining 50%. The non-Canadian exercised the right and thereby acquired the outstanding 50% after the coming into force of the Investment Canada Act. The subsequent acquisition of shares was not reviewable since, pursuant to the Interpretation Act, the right to acquire control obtained under the FIR Act was not affected by the coming into force of the new legislation.

October 3, 1985

#### Acquisition of Control

18. Non-Canadian partnership A owned a 50% interest in non-Canadian partnership B which, in turn, owned 50% of the voting shares of Canadian incorporated corporation C which operated a Canadian recreational business. The remaining 50% of the voting shares of C were owned by a Canadian. A acquired the remaining 50% ownership interest in B from another non-Canadian. The transaction did not result in the acquisition by A of control of the Canadian business. A's acquisition of the outstanding 50% interest in B did constitute the acquisition of control of B pursuant to paragraph 23(3)(a) and subsection 29(1) of the Act. B, however, did not control C. Pursuant to paragraph 28(2)(b) where one entity holds less than a majority of the voting shares of the corporation it does not control that corporation unless it controls it in fact through the ownership of one third or more of the voting shares. In this case, since the non-Canadian's 50% interest in C was balanced by the Canadian's 50% interest in C, in the absence of evidence to the contrary, B could not be said to control C in fact through the ownership of voting

shares. Accordingly, while the transaction did result in the acquisition of control of the non-Canadian partnership B, it did not result in the acquisition of control of the Canadian business carried on by C.

October 25, 1985

Realization of security;  
exemption

19. A non-Canadian bank submitted an application for an opinion that its acquisition of up to 16% of the common shares of a corporation carrying on a Canadian business and/or its acquisition of up to 67% interest in a limited partnership to be formed between the bank and the corporation and to which the assets of the corporation would be transferred would not be subject to the Investment Canada Act. The acquisition was to take place pursuant to a refinancing of a loan previously made by the bank to the corporation. An opinion was issued that the transactions would not be subject to the Act as
- a. the bank's acquisition of up to 16% of the voting shares of the corporation is deemed not to be the acquisition of control of the corporation under paragraph 28(3)(d),
- b. the acquisition of up to 67% of the voting interest in the partnership would constitute a potential acquisition of control which will be exempt under paragraph 10(1)(c) as the acquisition would be in connection with the realization of security granted for a loan or other financial assistance and not for any purpose related to the provisions of the Act.

October 29, 1985

Acquisition of Assets

20. A Canadian corporation A which was incorporated in Canada carried on a service business in Canada. A Canadian-incorporated corporation, B, a non-Canadian under the Act, carried on a similar business in Canada. A and B formed a new limited partnership in which A held a 40% ownership interest and acted as limited partner while B owned a 60% interest and acted as general partner. The limited partnership acquired from A all of the rights in and to customer accounts, purchase orders, service agreements, contracts and other rights to provide services. A retained all of its equipment, vehicles and other assets required to carry on its business. A then entered into a contract with the limited partnership whereby A managed and discharged all of the obligations arising under the intangible assets acquired by the limited partnership. This transaction did not give rise to an acquisition of control of a Canadian business under the

Act. Pursuant to paragraph 28(1)(c) of the Act, an asset purchase results in acquisition of control of a Canadian business only where "all or substantially all" of the assets used in carrying on that business are acquired. The acquisition of the intangible assets without the equipment and other assets used in the business did not constitute such an acquisition.

October 31, 1985

#### Business

21. A Canadian-incorporated corporation had carried on a business in Canada beginning in 1979. Since that time, the business had declined and had been inactive for some months. The corporation had no remaining assets and was merely a shell corporation. The shares in the corporation were sold to a non-Canadian. The acquisition of shares was not subject to the Act. Since the corporation had ceased to be engaged for a considerable time in any activity which could be described as "any undertaking or enterprise capable of generating revenue or carried on in anticipation of profit", it was not engaged in a "business" and, hence, was not carrying on a Canadian business. Accordingly, there was no acquisition of a Canadian business and the matter was not subject to the Act.

October 31, 1985

#### Acquisition of Assets

22. A Canadian corporation, A, carried on a business in Canada consisting of a chain of restaurants. A entered into an agreement with B, a non-Canadian corporation, which also carried on a business operating a chain of restaurants in Canada. Under the terms of the agreement, B acquired from A the real estate interests in the various restaurants operated by A but did not acquire any inventories, any good will, any central management assets, any proprietary rights or any other assets identified with the chain operated by A or with its trademarks. It was not B's intention to carry on the business of A but in fact to convert each site into a new and different kind of restaurant to be added to the existing chain operated by B. The acquisition of the real estate sites was not an acquisition of control of a Canadian business under the Act. Under subsection 28(1) of the Act, control of a Canadian business can only be acquired by asset purchase through the acquisition of "all or substantially all of the assets used in carrying on the Canadian business". The assets acquired in this case did not constitute "substantially all" of the assets used in operating the restaurant chain.

November 5, 1985

### Step Transaction

23. Corporation A, a non-Canadian under the Act, and a Canadian corporation, B, each owned a 50% interest in the voting interests of a partnership which carried on a Canadian chemical business. Both A and B wished to dispose of their interest in the Canadian business to another non-Canadian corporation, C. In order to facilitate the transaction, B sold its 50% partnership interest to its partner, A. Then, A, as the 100% owner of the operating partnership sold all of its ownership interests to C. An application for review was filed by C with respect to its acquisition from A of the ownership interests. No review was required for A's acquisition of B's 50% interest in the partnership. While paragraph 28(3)(a) in conjunction with the step-transaction provisions of subsection 29(1) of the Act, would treat such a transaction which resulted in A owning 100% of the partnership as an acquisition of control of the partnership, this initial acquisition by A was merely a preliminary step towards the ultimate acquisition by C. Subsection 29(1) establishes the principle that such a preliminary step should be treated as ancillary to the ultimate acquisition by C which is the acquisition properly reviewable under the Act.

November 6, 1985

### Corporate Reorganization; Exempt Acquisition of Control

24. A, a Canadian-incorporated corporation, carried on a manufacturing business in Canada. Substantially all of the assets used by A in carrying on the Canadian business were transferred to another corporation, B. A and B were both controlled through the ownership of voting interests by C, their non-Canadian parent corporation. The asset acquisition by B did not result in the acquisition of control of a Canadian business. Since the ultimate control of the Canadian business through the ownership of voting interests remained unchanged, the transaction was exempt under paragraph 10(1)(e) from the provisions of the Act.

November 12, 1985

### Insurance Company Exemption

25. A non-resident insurance company purchased an office tower situated in a major Canadian city. The non-resident insurance company was registered to carry on business in Canada under the Canadian and British Insurance Companies Act. The Company's income, including that to be earned from the building purchased, was reported by the company under the Canadian Income Tax Act, and the building purchased was transferred by the company to a trust company, as trustee for the company, pursuant to section 129 of the Canadian and British

Insurance Companies Act. As a result, the acquisition of the building by the company was not subject to the Act by virtue of the exemption for insurance companies set out in subparagraph 10(1)(j)(ii) of the Investment Canada Act.

November 12, 1985

Less than majority acquired

26. A non-Canadian acquired a 35% interest in an existing joint venture. The transaction was not subject to the Investment Canada Act since under subsection 28(3)(b), the acquisition of less than a majority of the voting interests in an unincorporated entity is not an acquisition of control.

November 20, 1985

Acquisition of Control

27. A Canadian business was carried on in Canada by a group of corporations all of which were wholly-owned by A, a holding corporation. All of these corporations were incorporated in Canada. Two Canadian citizens, X and Y, who were brothers-in-law and jointly managed the affairs of the Canadian business, owned, between them, 90% of the voting shares of A. Two non-Canadians, B and C, invested in A and received voting shares of A. As a result of the transaction, X and Y's interest in A was reduced to 50.3%, B owned 29.6% and C owned 10.1%. B and C asserted that they were unassociated with each other. At all times, the remaining 10% of A's shares were held by an unrelated non-Canadian. The transaction was not subject to the Act. If B and C were unassociated and did not form a joint venture, then B's block of 29.6% was less than a third of the shares of A and, therefore, deemed not to be acquisition of control of A, pursuant to paragraph 28(3)(d). Even if B and C had been considered to be a joint venture, although their combined total of 39.7% would have triggered a presumption of acquisition of control under paragraph 28(3)(c), this presumption would have been set aside by the fact that X and Y retained a majority of the voting shares of A thereby establishing that B and C did not control A in fact through the ownership of voting shares.

November 28, 1985

Acquisition of Control;  
Absolute rights to acquire  
voting interests

28. A non-Canadian corporation purchased 31% of the outstanding voting shares of a Canadian-incorporated corporation carrying on a Canadian

business. In addition, it purchased non-voting preferred shares convertible at the option of the owner, which, on conversion to common shares, would raise the ownership of voting shares to 40%. It had no immediate plans for such conversion. The transaction was not subject to the Act. The acquisition of less than one third (31%) of the voting shares of the corporation was deemed not to be acquisition of control of that corporation pursuant to paragraph 28(3)(d). The non-voting convertible preference shares were not voting interests for the purposes of the Act but did qualify as being absolute rights to acquire voting interests for the purposes of subsection 30(1). If the investor had desired that, for the purpose of the Act, they be treated as having been exercised, thus raising the total acquisition to 40%, he could have done so in order to obtain an immediate review.

December 3, 1985

Less than one-third  
of voting shares acquired

29. The investor acquired 25% of the voting shares of a Canadian holding company that owns 100% of the voting equity of two Canadian operating companies. By virtue of paragraph 28(3)(d), the investor is deemed not to have acquired control of the holding company and the two Canadian businesses. The investment was therefore not subject to the Act.

December 16, 1985

Right to Acquire  
Voting Interests

30. The investor made a loan to a newly-incorporated company ("Newco") that was acquiring the shares of a Canadian company with assets under \$5 million.

Newco issued a debenture to the investor. As additional security for the granting of the loan, the shareholders of Newco entered into a Securityholders' Agreement with the investor whereby the investor was given an option to acquire the shares of Newco owned by the shareholders. The exercise of the option was not made conditional upon the occurrence of a default under the debenture agreement, nor were there any other conditions precedent that had to be satisfied before the option could be exercised. As a result, the options granted to the investor were absolute rights under a written contract to acquire voting interests within the meaning of subsection 30(1) of the Act.

Pursuant to subsection 30(1), the investor elected to treat its option as if it had been exercised and, consequently, filed a notice on that basis concerning its acquisition of control of the Canadian

business. The investor would not be required to file a second notice or application when it subsequently exercises the option in accordance with the terms of the Securityholders' Agreement.

December 16, 1985

"Canadian business"

31. Two corporations, one of which is a non-Canadian within the definition in the Act, carried on a storage business in Canada through a limited partnership which they controlled. The two corporations each owned a 50% interest in certain land and equipment which they leased to the partnership for use in its business. An application was made for an opinion that the transfer by the two corporations of the land and equipment to the limited partnership would not be subject to the Act. An opinion was issued that the transaction was not subject to the Act. The two corporations' activity of leasing the land and equipment to the limited partnership had constituted a leasing business in Canada. However, at the time of acquisition of the land and equipment by the partnership, the lease and, therefore, the leasing business, would terminate. Consequently, the transaction would not constitute the acquisition of control of a "Canadian business" within the meaning of the Act.

December 16, 1985

Valuation of Oil and Gas  
Interests

32. The investor was acquiring an undivided majority interest in a shut-in gas well and in the petroleum and natural gas rights underlying certain properties adjacent to the well. The shut-in gas well and adjoining lands contained economically recoverable quantities of gas that were capable of production and, as a result, constituted a Canadian business.

The investor acquired its undivided majority interest by purchasing three undivided minority interests from three separate vendors. None of the vendors attributed a separate value to their interest in the well and lands in their audited financial statements. The vendors' audited financial statements could not be used, therefore, to ascertain the value of the well and lands. As a result, the value of the well and lands was determined from the value attributed to them by the operator.

The operator listed the oil and gas assets it managed at cost. Since the cost of the lands together with the total costs of drilling the well and acquiring and installing the wellhead, tubing, casing and

associated equipment, etc., was less than \$5 million, the investment to acquire an undivided majority interest in the well and lands was subject to notification only.

December 27, 1985

#### Corporate Reorganization

33. A corporation incorporated in Canada had been carrying on business in Canada for a number of years. It was controlled by a corporation in the United States which owned 80% of its voting shares. The United States corporation was itself wholly-owned and controlled by a West German entity.

The shares of the Canadian business (80%) were transferred to the West German entity. Since the Canadian business was already indirectly controlled in fact through voting interests by the West German entity, this transaction involved no change in control in fact through voting interests and was not subject to the Act, pursuant to paragraph 10(1)(e).

January 15, 1986

#### Absolute right

34. A non-Canadian acquired a right to acquire up to 90% of the shares of a corporation carrying on a Canadian business. The right would arise only upon the existing owners of the shares deciding to sell their interest and giving notice of such desire. Since the right was conditional upon the vendors' decision to sell, the right was conditional and not absolute. Accordingly, the election under subsection 30(1) of the Act, to have a right treated as if it had been exercised, was not available to the non-Canadian with respect to this right.

January 17, 1986

#### "Business"

35. A non-Canadian corporation acquired certain assets which included a non-operational oil refinery. The refinery had been closed by the vendor over a year previously due to obsolescence. The purchaser had no intention of re-opening the refinery and acquired the site primarily as a location for the construction of a new type of facility. The acquisition of the refinery was not subject to the Act since the refinery did not constitute a Canadian business. Because



it had been closed for over one year, was obsolete and would not be re-opened, it was considered to be a defunct business pursuant to Interpretation Note #1.

January 24, 1986

Acquisition of Control/  
New Canadian Business

36. The investor, a holding company, acquired 10% of the voting equity of a newly-formed Canadian company ("Newco"). An offshore subsidiary of the investor then entered into an agency agreement with Newco whereby Newco would obtain orders in Canada for the sale of the subsidiary's products, and forward the orders to the subsidiary who would then distribute the products directly to the ultimate purchasers. Newco would receive a commission based on the invoiced amount of the products supplied by the offshore subsidiary to the ultimate purchasers.

Since the investor acquired only 10% of the voting equity of Newco, it was deemed not to have acquired control of the company by virtue of para. 28(3)(d) of the Act. Furthermore, neither the investor nor its offshore subsidiary was establishing a new Canadian business, since neither would have a place of business in Canada nor assets used in carrying on the business. Consequently, the investment was not subject to the Act, since the investment did not constitute either the acquisition of control of a Canadian business or the establishment of a new Canadian business.

January 24, 1986

Shares Pledged as Security

37. A non-Canadian involved in litigation proceedings with a third party was required to pay damages to the third party as the result of the judgment of a foreign court. In order to proceed with an appeal of the trial decision, the non-Canadian was required to provide security for the judgment in a form satisfactory to the court. The non-Canadian deposited a majority of the shares of a Canadian company with the court as the required security. Since the non-Canadian retained full beneficial ownership of the shares pledged as security, there was no change in control of the Canadian company, and the transaction was not subject to the Investment Canada Act.

January 29, 1986

"Canadian business"

38. A non-Canadian acquired control of X Co, a corporation incorporated in Ontario. X Co did not have any employees in Canada, or carry on any business activities in Canada. Its registered office was in Canada but the head office was located outside of Canada. X Co controlled two corporations incorporated outside of Canada that carried on business outside of Canada. The transaction was not subject to the Investment Canada Act since, without assets or employees in Canada, X Co did not carry on a "Canadian business" as that term is defined in section 3 of the Act.

February 7, 1986

"Corporate re-organization"

39. A non-Canadian corporation incorporated in Canada carried on a Canadian business in the food industry. One of its business activities was carried on through a division which could have been carried on separately as a Canadian business. The non-Canadian incorporated a new wholly-owned subsidiary and transferred all of the assets of the division to the new subsidiary. The transaction was not subject to the Investment Canada Act. While the acquisition of all of the assets of the division by the new subsidiary constituted an acquisition of control of a Canadian business by a non-Canadian since there was no change in ultimate control in fact through voting shares, the re-organization was exempt under paragraph 10(1)(e).

February 20, 1986

Contractual Rights in Existence  
Prior to IC Act

40. The investor acquired in 1983 a contractual right to acquire all or substantially all of the assets used in carrying on two Canadian businesses. Under the FIR Act, the investor was deemed to have acquired control of the two Canadian businesses. As a result, the investor filed an application under the FIR Act and obtained Governor in Council allowance for the acquisition of the two businesses. Following proclamation of the Investment Canada Act, the investor proposed to acquire the assets of the two Canadian businesses on terms and conditions that differed from those set out in the 1983 contract.

The investment was not subject to the Investment Canada Act since the investor was already deemed to control the two Canadian businesses at the date of proclamation of the Investment Canada Act. The subsequent purchase of the assets, therefore, did not result in any change of control of the Canadian businesses for purposes of the Act.

February 21, 1986

Acquisition of control;  
real estate assets;  
absolute right

41. A non-Canadian acquired a 50% interest in all of the lands and buildings which comprised a major commercial and office complex. The non-Canadian acquired, at the same time, a right to acquire the remaining 50% interest in the lands and buildings. The right could be exercised to any time after its acquisition and without the satisfaction of any preconditions or the occurrence of prior events. The right, therefore, was an absolute right as described in subsection 30(1) of the Act and the non-Canadian was entitled to have the right treated, for the purposes of the Act, as if it had been fully exercised such that the non-Canadian acquired 100% of the interests in the lands and buildings. The acquisition of all of the interests in the lands and buildings comprising the complex resulted in the acquisition of control of a Canadian business. The operations and management of such a complex constituted a Canadian business and the acquisition of the lands and buildings constituted acquisition of all or substantially all of the property used in carrying on the Canadian business (paragraph 28(1)(c)). By electing under subsection 30(1) of the Act, the non-Canadian was able to have the transaction treated as the acquisition of all of the interests in the lands and buildings and, therefore, submit the transaction to review as the acquisition of control of the Canadian business at the time of the transaction.

February 24, 1986

#### Transition

42. A non-Canadian owned 47% of the voting shares of a corporation carrying on a Canadian business. He had acquired these shares in 1963 and at that time also obtained a right of first refusal over the remaining shares. 47% of the remaining shares were held by one family. That family proposed to sell its shares and the non-Canadian exercised his right to acquire them. The transaction was not subject to the Investment Canada Act. Under the Foreign Investment Review Act, anyone who had a right under contract to acquire shares was treated as if the shares were acquired at the time the right was acquired. Accordingly, if the right was acquired prior to the coming into force of the FIR Act, the actual exercise of the right, subsequent to the coming into force of the FIR Act, was not subject to that Act. Similarly, the exercise of a pre-FIRA right after the coming into force of the Investment Canada Act is not subject to the Investment Canada Act. The Interpretation Act directs that where an investor had a right under the FIR Act to implement an investment without being subject to review, it retains that right under the Investment Canada Act.

February 28, 1986

Purchase of Part of the Assets  
of a Canadian Business

43. The owners of the investor had received Governor in Council allowance under the FIR Act to establish a new business. As part of the establishment of the new business, the investor proposed to acquire an industrial building and surrounding lands from a trustee in bankruptcy. The investor was not purchasing any equipment or materials. Since the investor was not purchasing all or substantially all of the assets used in carrying on a Canadian business, the investment was not subject to the Investment Canada Act.

March 3, 1986

Acquisition of control;  
50% of Voting Shares

44. A non-Canadian-controlled corporation acquired 50% of the shares of a corporation incorporated in Canada carrying on a Canadian business. The remaining 50% were owned by a Canadian-controlled corporation. The transaction was not subject to the Act. Although the acquisition of 50% of the voting shares triggered the presumption of acquisition of control under paragraph 28(3)(c), the existence of an equal block of 50% of the shares demonstrated that control in fact through voting shares had not been acquired and the presumption was set aside.

March 4, 1986

Acquisition of Control: One-third of voting shares

45. A corporation carrying on a Canadian business was equally owned by two shareholders. The two shareholders each sold shares of the corporation to a non-Canadian investor. Following the transaction, each of the three parties owned one-third of the voting shares of the corporation.

By acquiring one-third of the voting shares of the corporation, the non-Canadian investor was presumed to have acquired control of the corporation by virtue of paragraph 28(3)(c) of the Act. However, the existence of two other equal blocks (33 1/3%) of the corporation's voting shares indicated that the non-Canadian investor did not control the corporation through the ownership of voting shares. As a result, the non-Canadian was able to rebut the presumption, and the investment was not subject to the Act.

April 3, 1986

Paragraphs 10(1)(f) and 10(1)(g)  
Related Business

46. A non-Canadian corporation acquired substantially all of the operating assets of two corporations whose shares were wholly-owned by Her Majesty in Right of a province. The acquisition was not subject to the Act in that one corporation was tax exempt under paragraph 149(1)(d) of the Income Tax Act and the other was an agent of Her Majesty in Right of a province (see paragraphs 10(1)(f) and 10(1)(g)).

April 7, 1986

Corporate Reorganization

47. The merger of two American corporations that did not result in any change in the ultimate control in fact of a Canadian business by three non-Canadian individuals, through the ownership of voting shares, was a transaction that is not subject to the Act by virtue of paragraph 10(1)(e). Ultimate control remained with the same three non-Canadian individuals notwithstanding a change in the identity of one of the corporations in the chain between the ultimate controllers and the Canadian business.

April 9, 1986

Step-Transaction

48. Corporation X, a public company, was a non-Canadian under the Act, controlled in fact by a non-Canadian who owned 26% of its voting shares. Corporation X entered into a transaction with Corporation Y which was in the nature of a reverse takeover. Corporation Y was owned 100% by 36 Canadian shareholders. These shareholders did not act together nor was Y controlled in fact by any one shareholder or group of shareholders. Pursuant to the transaction, X agreed to acquire all of the issued shares of Y from the shareholders of Y. In turn, those shareholders of Y would receive new voting shares of X amounting to 49.5% of the total issued voting shares of X. Further, they would enter into a voting trust agreement with regard to the 49.5%. As a result, the current 26% control block would be reduced to 13% and control of X would pass to the owners of the 49.5% block. Consequently, X would become a Canadian under the Act. Although the change of status of X occurred simultaneously with X's acquisition of the Canadian business carried on by Y, it was unnecessary to determine whether the acquisition was made by X as a Canadian or a non-Canadian. The result of the entire transaction was the control of a Canadian business by a Canadian and, pursuant to section 29, any intervening transfers or acquisitions were merely steps in this process.

April 10, 1986

Acquisition of control

49. A non-Canadian acquired a 42% interest in the voting shares of a corporation carrying on a Canadian business. A Canadian retained a 43% interest in the same corporation with the remaining 15% of the voting shares being widely held. The non-Canadian and the Canadian entered into a shareholders' agreement whereby they agreed to act together to elect a board of directors equally divided between their nominees. The transaction did not result in an acquisition of control of a Canadian business under the Investment Canada Act. Although the acquisition of 42% of the voting shares did raise the presumption of acquisition of control pursuant to paragraph 28(3)(c), the existence of a larger existing Canadian shareholder was sufficient to set this presumption aside.

April 16, 1986

Acquisition of voting shares;  
corporate reorganization

50. A corporation carrying on a Canadian business and experiencing financial difficulties issued a large number of new voting shares to its many creditors in exchange for the retirement of certain of its debt obligations. The creditors, consisting mostly of large financial institutions, acted together only with respect to their mutual interest in the financial health of the corporation and no one of them received more than a small percentage of the overall total of issued voting interests. In addition, the corporation transferred one of its operating divisions to a new corporation in which it held a 45% interest, the remaining interests being owned by two Canadian corporations with 35% and 20%, respectively. The transactions were not subject to the Investment Canada Act. No non-Canadian acquired control as a result of the share issue. The transfer of the division was exempt since either the 45% reflected continuing ultimate control (paragraph 10(1)(e)) or, if the 45% shareholder did not control, the new corporation was a Canadian under paragraph 26(1)(c).

April 18, 1986

"Canadian business"

51. A European corporation acquired the shares of a corporation incorporated in Canada whose only asset was a predominately undeveloped tract of land in Canada with two small cabins thereon. No commercial activity had been carried on upon the land, and the purchaser did not intend to use the land for other than pleasure and as a long term investment. The acquisition of shares was not subject to the Act. The ownership by the corporation of undeveloped land

without commercial activity on it did not constitute a Canadian business and, therefore, acquisition of control of the corporation did not result in the acquisition of control of a Canadian business.

April 25, 1986

"Canadian-controlled corporation"

52. A corporation formed to carry on a construction business had a majority of voting shares owned by a Canadian individual. A non-Canadian individual owned the minority interest. The establishment of the new business was not subject to the Act since the corporation was a Canadian pursuant to paragraph 26(1)(a) of the Act.

April 30, 1986