[**http://laws-lois.justice.gc.ca/eng/acts/C-20/FullText.html**](http://laws-lois.justice.gc.ca/eng/acts/C-20/FullText.html)

**Canadian Ownership and Control Determination Act**

**R.S.C., 1985, c. C-20**

An Act respecting Canadian ownership and control determination

**Short Title**

**Marginal note:Short title**

**1** This Act may be cited as the [*Canadian Ownership and Control Determination Act*](http://laws-lois.justice.gc.ca/eng/acts/C-20).

* 1980-81-82-83, c. 107, s. 34.

**Interpretation**

**Marginal note:Definitions**

* **2** **(1)** In this Act,

***certificate*** means a certificate issued by the Minister under this Act; (*certificat*)

***control status*** means, with respect to a person, whether or not the person is Canadian controlled as determined under this Act and the regulations; (*état de contrôle*)

***direct equity percentage*** means, with respect to formal equity owned by a person in any particular person,

* + **(a)** where the particular person does not have more than one class of formal equity within the meaning of the regulations, the percentage of the formal equity of the particular person that is owned by the person, and
	+ **(b)** where the particular person has more than one class of formal equity within the meaning of the regulations, subject to the regulations, the aggregate fair market value of the formal equity of the particular person that is owned by the person, expressed as a percentage of the aggregate fair market value of all the formal equity of the particular person; (*pourcentage de participation directe*)

***formal equity*** means,

* + **(a)** with respect to a corporation, any share of the corporation, other than a share excluded by the regulations, that is, or is deemed under the regulations to be, issued and outstanding,
	+ **(b)** with respect to a partnership, any interest or right in the capital or income, or both, of the partnership,
	+ **(c)** with respect to a trust, any beneficial interest in the property of the trust, and
	+ **(d)** with respect to any other person, such interest or right in respect of that person as is prescribed; (*participation ordinaire*)

***informal equity*** means, subject to the regulations, any interest or right to participate in or benefit from, either currently or in the future, other than by way of formal equity, the assets, revenues or business activities of another person; (*participation non ordinaire*)

***investor*** means, with respect to an applicant for a certificate, a person who has a total equity percentage in the applicant that is greater than zero; (*investisseur*)

***Minister*** means the Minister of Natural Resources; (*ministre*)

***owned*** means, subject to the regulations, beneficially owned, and the words "owner" and "ownership" have corresponding meanings; (*posséder*)

***person*** means an individual, a corporation, a partnership, a trust, a government, an agency of government, a segregated fund within the meaning of the regulations and an organization that is prescribed as being a person or that falls into a class of organizations prescribed as being persons; (*personne*)

***Version anglaise seulement***

***prescribed*** means prescribed by the regulations, or with respect to the form and manner in which any application under this Act shall be filed or the information and documentation to be contained in or to accompany that application, means prescribed by order of the Minister. (*Version anglaise seulement*)

* **Marginal note:Definition of "non-eligible person"**

**(2)** For the purposes of this Act, the expression ***non-eligible person*** has the same meaning as it has under subsection 3(1) of the *Foreign Investment Review Act*, chapter 46 of the Statutes of Canada, 1973-74, and the regulations made pursuant to that Act, with such modifications as the circumstances require, except that, until September 1, 1987,

* + **(a)** the definition "non-eligible person" in subsection 3(1) of that Act shall be read as if subparagraph (a)(ii) of that definition were deleted therefrom; and
	+ **(b)** subsection 3(5) of that Act shall be read as if the words "and permanent residents who have been ordinarily resident in Canada for more than one year after the time at which they first became eligible to apply for Canadian citizenship", wherever those words appear therein, were deleted therefrom.
* **Marginal note:Trust property**

**(3)** For greater certainty, for the purposes of this Act, a separate trust exists with respect to all assets, investments or property held by a trustee under a trust instrument for the benefit of a person, group or class of persons, notwithstanding that under the same trust instrument different assets, investments or property are held for the benefit of a different person, group or class of persons.

* **Marginal note:Total equity percentage**

**(4)** For the purposes of this Act, the total equity percentage of a person in any particular person shall be obtained by calculating the aggregate of

* + **(a)** the person’s direct equity percentage in respect of the particular person, and
	+ **(b)** the aggregate of the percentages each of which is the product obtained when the person’s total equity percentage in respect of any other person is multiplied by that other person’s direct equity percentage in respect of the particular person.
* **Marginal note:Indirect equity percentage**

**(5)** For the purposes of this Act, a person (in this subsection referred to as "the first person") shall calculate the indirect equity percentage, in respect of an applicant, of any other person having a direct equity percentage in the first person by multiplying the direct equity percentage of the other person in the first person by the aggregate of the percentages, each of which is the first person’s direct equity percentage or indirect equity percentage in respect of the applicant.

* **Marginal note:Power of Minister**

**(6)** For the purposes of this Act, where the Minister is empowered to make a determination or redetermination in respect of the Canadian ownership rate of a person, that power shall include the power to adjust the Canadian ownership rate of the person on the basis of informal equity to the extent that, in the opinion of the Minister, is appropriate in the circumstances.

* **Marginal note:References**

**(7)** For the purposes of this Act, a reference in this Part to the *Foreign Investment Review Act*, chapter 46 of the Statutes of Canada, 1973-74, or to any regulation made pursuant to that Act or to any provision of that Act or any such regulation shall be construed as a reference to that Act, regulation or provision as it read immediately before the coming into force of section 46 of the [*Investment Canada Act*](http://laws-lois.justice.gc.ca/eng/acts/I-21.8), chapter 20 of the Statutes of Canada, 1985.

* R.S., 1985, c. C-20, s. 2;
* R.S., 1985, c. 28 (1st Supp.), s. 48;
* 1994, c. 41, s. 37.

**Marginal note:Binding on Her Majesty**

**3** This Act is binding on Her Majesty in right of Canada or a province.

* 1980-81-82-83, c. 107, s. 36.

**Qualified Applicants**

**Marginal note:Who may apply**

**4** The following are qualified to apply for a certificate:

* **(a)** an individual other than a non-eligible person;
* **(b)** a corporation incorporated in Canada;
* **(c)** a partnership, if the relationship among the partners as such is governed by the laws of a province;
* **(d)** a trustee in respect of a trust, if the trustee and beneficiaries are, with respect to their status as such, governed by the laws of a province;
* **(e)** an insurance company incorporated in Canada in respect of any of its segregated funds within the meaning of the regulations; and
* **(f)** any person prescribed as being qualified to apply for a certificate or who falls into a class of persons prescribed as being qualified to apply for a certificate.
* 1980-81-82-83, c. 107, s. 37.

**Canadian Ownership Rate and Control Status Determination**

**Marginal note:Applications**

* **5** **(1)** Every application for a certificate shall be filed in the prescribed form and manner and shall contain or be accompanied by the prescribed information and documentation and, for the purposes of the application, the Canadian ownership rate and control status of a person shall be determined in accordance with this Act and the regulations.
* **Marginal note:Control status**

**(2)** Subject to any regulations made under paragraph 20(f) or (g), a person is Canadian controlled if that person is not a non-eligible person and is not Canadian controlled if that person is a non-eligible person.

* **Marginal note:Presumptions**

**(3)** For the purpose of determining whether a partnership or trust is a non-eligible person, the partnership or trust shall be deemed to be a corporation incorporated in Canada or elsewhere, and

* + **(a)** with respect to a partnership, the interests or rights in respect of its capital or income shall be deemed to be shares of the corporation, the beneficial owners of those interests or rights shall be deemed to be shareholders of the corporation and, with respect to a limited partnership, any general partner shall be deemed to be a member of the board of directors of the corporation; and
	+ **(b)** with respect to a trust, the beneficial interests in the property of the trust shall be deemed to be shares of the corporation, the owners of those beneficial interests shall be deemed to be shareholders of the corporation and the trustees shall be deemed to be members of the board of directors of the corporation.
* 1980-81-82-83, c. 107, s. 38.

**Marginal note:Determination by Minister under *Foreign Investment Review Act***

* **6** **(1)** Where the Minister designated to act as the Minister for the purposes of the *Foreign Investment Review Act*, chapter 46 of the Statutes of Canada, 1973-74, has reached the opinion under subsection 4(1) of that Act that a person is not a non-eligible person within the meaning of that Act, that person shall, subject to the regulations, be deemed to be Canadian controlled for the purposes of this Act for as long as the opinion is binding on that Minister.
* **Marginal note:Idem**

**(2)** Where the Minister designated to act as the Minister for the purposes of the *Foreign Investment Review Act*, chapter 46 of the Statutes of Canada, 1973-74, has reached the opinion under subsection 4(1) of that Act that a person is a non-eligible person within the meaning of that Act, or demands notice under subsection 8(3) of that Act from a person he believes to be a non-eligible person, that person shall, subject to subsection (3) of this section, be deemed not to be Canadian controlled for the purposes of this Act for as long as the opinion under subsection 4(1) of that Act is binding on that Minister or the demand for notice under subsection 8(3) of that Act is binding on the recipient of the notice, and any certificate issued in respect of that person shall, if necessary, be revised accordingly.

* **Marginal note:Application**

**(3)** Subsection (2) does not apply where the opinion of the Minister referred to in that subsection would have been otherwise, or where the demand for notice referred to in that subsection would not have been made, had the definition "non-eligible person" in subsection 3(1) of the *Foreign Investment Review Act*, chapter 46 of the Statutes of Canada, 1973-74, been read in accordance with subsection 2(2) of this Act.

* 1980-81-82-83, c. 107, s. 38.

**Applications and Certificates**

**Marginal note:Acknowledgment of receipt of application**

* **7** **(1)** Where the Minister is satisfied that an application for a certificate has been made by a person qualified to apply, has been filed in the form and manner prescribed and contains or is accompanied by the information and documentation prescribed, he shall send to the applicant, by personal delivery or registered mail, an acknowledgment as to the date of receipt of the application by the Minister.
* **Marginal note:Determination by Minister**

**(2)** The Minister shall examine each application for a certificate the receipt of which has been acknowledged under subsection (1) and any supplementary information or documentation provided pursuant to section 8 and shall, in accordance with this Act and the regulations, determine the Canadian ownership rate or the Canadian ownership rate and control status in respect of which a certificate was applied for.

* **Marginal note:Issue of certificate**

**(3)** Subject to section 8, the Minister shall, not later than ninety days after the acknowledged date of receipt of the application, issue a certificate to the applicant stating the Canadian ownership rate or the Canadian ownership rate and control status of the applicant, as determined under subsection (2), and the effective period of the certificate.

* **Marginal note:Saving**

**(4)** Nothing in this section prevents the Minister, on application therefor, from issuing a certificate stating the control status of a person to whom there has been issued a certificate stating only his Canadian ownership rate, where the latter certificate is in effect at the time the application is made.

* **Marginal note:Statement of reconciliation**

**(5)** Where the Canadian ownership rate stated in a certificate differs from that submitted with the application for the certificate, the Minister shall provide the applicant with a statement of reconciliation.

* 1980-81-82-83, c. 107, s. 39.

**Marginal note:Supplementary information and documentation**

* **8** **(1)** Where the Minister, after acknowledging receipt of an application for a certificate, is unable to determine the Canadian ownership rate or control status of the applicant or make any other relevant determination, he shall, as often as is required, give notice to the applicant in writing, by personal delivery or registered mail, requesting any supplementary information or documentation that the Minister considers necessary in order to enable him to make the determination.
* **Marginal note:Suspension of period for issuing certificate**

**(2)** Where supplementary information or documentation is requested by notice in writing under subsection (1) or an audit or examination is begun after notice in writing under section 15, the period for issuing a certificate ceases to run from the giving of the relevant notice, resumes running on the day the Minister receives all the supplementary information and documentation requested or the day the audit or examination is completed, as the case may be, and continues to run for a period after that day that is the greater of

* + **(a)** thirty days, and
	+ **(b)** the balance of the period for issuing a certificate that remained on the giving of the relevant notice.
* 1980-81-82-83, c. 107, s. 40.

**Marginal note:Currency of information and documentation**

**9** All information and documentation relating to the Canadian ownership rate on which an application for a certificate is based shall, subject to such exemptions as the Minister may allow, be current as of a day or days determined in the manner prescribed.

* 1980-81-82-83, c. 107, s. 41.

**Marginal note:Effective period of certificate**

* **10** **(1)** A certificate is effective as of the acknowledged date of receipt of the application for it and, subject to subsections (2) and (3), it continues to be effective for a period of twelve months from that date or for such longer period or periods, not exceeding twenty-four months from that date, as may be prescribed in respect of such classes of persons as are prescribed.
* **Marginal note:Additional effective period**

**(2)** The Minister may, in the manner prescribed, allocate among any persons or classes thereof to whom certificates are to be issued effective for the period referred to in subsection (1) an additional effective period not exceeding six months.

* **Marginal note:Other effective periods**

**(3)** The Minister may

* + **(a)** on request by an applicant for a certificate, issue a certificate effective for a period less than the effective period under subsection (1) or (2); and
	+ **(b)** on request by a person to whom a certificate was issued, reduce the effective period of the certificate and revise the certificate accordingly.
* **Marginal note:New certificate**

**(4)** Where the holder of a current certificate has, in substantial compliance with this Act and the regulations, applied for a new certificate prior to the expiration of the current certificate, the Minister may issue a new certificate effective as of the day the current certificate expires.

* 1980-81-82-83, c. 107, s. 42.

**Marginal note:New or amended application**

* **11** **(1)** The holder of an effective certificate shall, in the form and manner prescribed, file a new application for a certificate or amend his original application where
	+ **(a)** the certificate shows the holder to be Canadian controlled and he has ceased to be Canadian controlled;
	+ **(b)** the Canadian ownership rate of the holder has decreased from that stated in the certificate in the circumstances prescribed by more than the prescribed number of percentage points;
	+ **(c)** the holder knows or ought to know that the certificate was issued on the basis of an erroneous determination or false or misleading information;
	+ **(d)** the holder knows or ought to know that any provision of an agreement, arrangement or undertaking that was submitted with the application for the certificate was breached or was not fully observed; or
	+ **(e)** the Minister, by notice in writing to the holder delivered personally or sent by registered mail, requires the application or amendment to be made where he believes, on reasonable grounds, that
		- **(i)** paragraph (a) or (b) applies,
		- **(ii)** the certificate was issued on the basis of an erroneous determination or false or misleading information, or
		- **(iii)** any provision of an agreement, arrangement or undertaking that was submitted with the application for the certificate was breached or was not fully observed.
* **Marginal note:Failure to comply**

**(2)** Where the holder of a certificate fails to comply with paragraph (1)(e) within thirty days after receipt of a notice sent by the Minister pursuant to that paragraph, or within such longer period as the Minister may reasonably allow, the certificate shall cease to be effective as of the day on which, in the opinion of the Minister, the event described in paragraph (1)(a) or (b) or subparagraph (1)(e)(ii) or (iii) occurred.

* **Marginal note:Application may be filed**

**(3)** The holder of an effective certificate may, in the form and manner prescribed, file a new application for a certificate or amend his original application where, in the holder’s opinion, his Canadian ownership rate has increased or he has become Canadian controlled.

* **Marginal note:Certificate issued pursuant to a new application**

**(4)** Sections 7 to 10 apply, with such modifications as the circumstances require, with respect to a new application for a certificate filed pursuant to subsection (1) or (3) and with respect to a certificate issued pursuant to that application, except that the certificate shall be effective

* + **(a)** with respect to a new application filed pursuant to paragraph (1)(a) or (b) or subparagraph (1)(e)(i), as of the day on which the relevant change in Canadian ownership rate or control status occurred;
	+ **(b)** with respect to a new application filed pursuant to paragraph (1)(c) or (d) or subparagraph (1)(e)(ii) or (iii), as of the day the current certificate became effective; or
	+ **(c)** with respect to a new application filed pursuant to subsection (3), as of the day that the relevant change in Canadian ownership rate or control status occurred, and shall continue to be effective until the day the current certificate would, but for subsection (6), have ceased to be effective.
* **Marginal note:Certificate issued pursuant to an amended application**

**(5)** Sections 7 and 8 apply, with such modifications as the circumstances require, with respect to an amended application for a certificate filed pursuant to subsection (1) or (3) and with respect to a certificate issued pursuant to that amended application, and the certificate shall be effective as of the day set out in paragraph (4)(a), (b) or (c), as the case may be, and shall continue to be effective until the day the current certificate would, but for subsection (6), have ceased to be effective.

* **Marginal note:Current certificate ceases**

**(6)** On the issue of a certificate to a person pursuant to a new or amended application under this section, any current certificate of that person ceases to be effective as of the day the certificate so issued is effective.

* **Marginal note:Definition of "current certificate"**

**(7)** In this section, ***current certificate*** means any certificate that is in effect on the issue of a certificate pursuant to a new or amended application under this section.

* 1980-81-82-83, c. 107, s. 43.

**Marginal note:Redetermination by Minister**

* **12** **(1)** The Minister may, at any time, for any relevant period, redetermine the Canadian ownership rate or control status or both of a person to whom a certificate that is no longer in effect was issued where the Canadian ownership rate or control status or both of that person differed from that stated in the certificate by reason of any of the circumstances set out in paragraph 11(1)(a) or (b), subparagraph 11(1)(e)(ii) or (iii), subsection 13(4) or subsection 16(3), (4) or (6).
* **Marginal note:Notice**

**(2)** On making a redetermination under subsection (1), the Minister shall give notice thereof by personal delivery or registered mail to the person to whom the certificate referred to in that subsection was issued.

* 1980-81-82-83, c. 107, s. 44.

**Marginal note:Avoiding or mitigating unjust result**

* **13** **(1)** Where, in respect of any person whose Canadian ownership rate is relevant to an application for a certificate or to whom a certificate currently in effect has been issued, the Minister is of the opinion that due to exceptional circumstances the determination of the Canadian ownership rate of that person in accordance with this Act and the regulations would produce or has produced a result that is manifestly unjust to that person in any case, he may, at any time, on his own initiative and without any notice or hearing, make or remake the determination in such manner as, in his opinion, will, as equitably as possible, avoid or mitigate that result, and that determination or redetermination shall be binding on all persons for the purposes of this Act.
* **Marginal note:New certificate to be issued**

**(2)** Where the Minister makes a determination or redetermination pursuant to subsection (1), he shall issue a certificate or new certificate accordingly, stating the Canadian ownership rate or the Canadian ownership rate and control status of the applicant, and the effective period of the certificate.

* **Marginal note:Effective period**

**(3)** A certificate issued pursuant to subsection (2) shall be effective for the period provided by section 10.

* **Marginal note:Redetermination where this Act and the regulations not complied with**

**(4)** Notwithstanding anything in this Act, where the Minister is of the opinion that the Canadian ownership rate or control status stated in a certificate was not determined in accordance with this Act and the regulations to the prejudice of the person to whom the certificate was issued, the Minister shall redetermine the Canadian ownership rate or control status in accordance with this Act and the regulations and issue a new certificate accordingly.

* **Marginal note:Idem**

**(5)** A new certificate issued pursuant to subsection (2) or (4) shall replace any certificate in effect on its issue, shall be effective as of the day the certificate so replaced became effective and shall continue to be effective until the day the certificate so replaced would, but for this section, have ceased to be effective.

* **Marginal note:Special status person**

**(6)** The Governor in Council may, by order, declare any person to have a special status and, where that declaration is made, that person shall be deemed to have a Canadian ownership rate of one hundred per cent.

* 1980-81-82-83, c. 107, s. 45.

**Administration**

**Marginal note:Keeping records**

* **14** **(1)** Every person to whom a certificate has been issued shall keep documents, records and books of account at his place of business or other prescribed place in Canada in such form and containing such information as will enable the Minister to verify that the person is qualified to apply for a certificate, to verify the Canadian ownership rate or control status of the person and to verify the accuracy and completeness of the information and documentation submitted to the Minister in respect of the person.
* **Marginal note:Disposal of records**

**(2)** Every person required by subsection (1) to keep documents, records and books of account shall retain every such document, record or book of account until the expiration of six years from the day the relevant application for a certificate was filed, unless otherwise authorized by the Minister.

* 1980-81-82-83, c. 107, s. 46.

**Marginal note:Audit or examination**

* **15** **(1)** At any time after an application for a certificate has been filed, the Minister may, on giving notice in writing to the applicant, conduct audits or examinations of the relevant documents, records and books of account of the applicant to verify that the applicant is qualified to apply for a certificate, to verify the Canadian ownership rate or control status of the applicant and to verify the accuracy and completeness of the information and documentation submitted to the Minister in respect of the applicant.
* **Marginal note:Records to be made available**

**(2)** Documents, records and books of account required to be kept by or under this Act shall, for the purpose of audit or examination, be made available at all reasonable times to any person authorized by the Minister for the purpose.

* **Marginal note:Assisting authorized persons**

**(3)** Every applicant for a certificate shall, for the purpose of an audit or examination under this Act, give all reasonable assistance to any person authorized by the Minister to carry out the audit or examination, provide access to all relevant sites, answer, orally or in writing, as required, all questions relating to the audit or examination and provide all information and documentation in his possession and all copies required for the purpose of the audit or examination.

* **Marginal note:Non-compliance**

**(4)** Where an applicant for a certificate refuses without reasonable cause to submit to an audit or examination under this section or refuses or knowingly fails to comply with any other requirement of this section, the Minister may

* + **(a)** refuse to issue a certificate to the applicant;
	+ **(b)** by notice in writing delivered personally or sent by registered mail, revoke the applicant’s certificate effective as of the day specified in the notice; and
	+ **(c)** deem the Canadian ownership rate of the applicant to be nil or deem the applicant not to be Canadian controlled for any period prior to the date of the refusal or failure to comply during which any certificate issued to the applicant was effective.
* **Marginal note:Presumption**

**(5)** Where the Minister revokes a certificate pursuant to subsection (4), the Canadian ownership rate of the applicant shall be deemed to be nil for any period prior to the date of the revocation during which that or any other certificate issued to the applicant was effective.

* **Marginal note:Definition of "applicant"**

**(6)** In this section, ***applicant*** includes a person to whom a certificate has been issued pursuant to an application.

* 1980-81-82-83, c. 107, s. 47.

**Marginal note:Consent of investor or nominee to audit or examination**

* **16** **(1)** Every applicant for a certificate shall, in the prescribed form and manner, provide the Minister with a consent of
	+ **(a)** any investor having a direct equity percentage in respect of the applicant of one per cent or more, or any nominee of the investor, or
	+ **(b)** any investor having a total equity percentage in respect of the applicant of five per cent or more, or any nominee of the investor,

whereby the investor, or nominee on behalf of the investor, consents and undertakes to submit to audit or examination of such of the documents, records and books of account of the investor or nominee or both as relate to the Canadian ownership rate of the applicant, and to give all reasonable assistance for that purpose to any person authorized by the Minister for the purpose.

* **Marginal note:Idem**

**(2)** Every applicant for a certificate shall, in the prescribed form and manner, provide the Minister with a consent of any prescribed person or nominee of the prescribed person whereby the prescribed person, or nominee on behalf of the prescribed person, consents and undertakes to submit to audit or examination of such of the documents, records and books of account of the prescribed person or nominee or both as relate to the control status of the applicant, and to give all reasonable assistance for that purpose to any person authorized by the Minister for the purpose.

* **Marginal note:Where consent not provided or complied with**

**(3)** Where an applicant for a certificate fails to provide a consent required under subsection (1) or an investor, or nominee on behalf of an investor, fails to comply with such a consent, the Canadian ownership rate of the investor shall, for the purposes of the application or any certificate issued pursuant to the application, be deemed to be nil.

* **Marginal note:Idem**

**(4)** Where an applicant for a certificate fails to provide a consent required under subsection (2) or a prescribed person, or nominee on behalf of a prescribed person, fails to comply with a consent so provided, the prescribed person shall, for the purposes of the application or any certificate issued pursuant to the application, be deemed to be a non-eligible person.

* **Marginal note:Where Canadian ownership rate or control status not properly determined and certified**

**(5)** Where the Canadian ownership rate of an investor is not determined and certified in the prescribed form and manner, it shall, for the purposes of any application for a certificate, be deemed to be nil, and where the control status of a prescribed person is not determined and certified in the prescribed form and manner, that prescribed person shall, for the purposes of any application for a certificate, be deemed to be a non-eligible person.

* **Marginal note:Where prescribed information, etc., not submitted on demand**

**(6)** Where an applicant for a certificate or a person to whom a certificate has been issued fails to provide the Minister, on demand, with any prescribed form, information, documentation or certification relevant to the determination of the Canadian ownership rate of an investor, that Canadian ownership rate shall, for the purposes of the application or any certificate issued pursuant thereto, be deemed to be nil.

* **Marginal note:Exemption where Her Majesty is an investor**

**(7)** Notwithstanding anything in this section, the Minister may exempt an applicant for a certificate from the application of this section or any provision thereof in respect of any investor that is Her Majesty in right of Canada or a province or an entity all or substantially all of the formal equity or assets of which are owned, directly or indirectly, by Her Majesty in right of Canada or a province.

* 1980-81-82-83, c. 107, s. 48.

**Disclosure of Information**

**Marginal note:Privileged information and documentation**

**17** Information or documentation obtained by the Minister under this Act or by a person or agency referred to in paragraphs 18(1)(a) to (e) is privileged and shall not knowingly be or be permitted to be communicated, disclosed or made available without the written consent of the person from whom it was obtained.

* 1980-81-82-83, c. 107, s. 49.

**Marginal note:Exceptions**

* **18** **(1)** Information or documentation obtained under this Act may be communicated, disclosed or made available for the purposes of the administration or enforcement of this Act, legal proceedings related thereto or criminal proceedings under an Act of Parliament and may be communicated, disclosed or made available
	+ **(a)** to the Minister of Finance solely for the purposes of evaluating and formulating tax policy in relation to energy matters;
	+ **(b)** to the Minister designated to act as the Minister for the purposes of the *Foreign Investment Review Act*, chapter 46 of the Statutes of Canada, 1973-74, for any purpose relating to the administration or enforcement of that Act or this Act;
	+ **(c)** to the Minister of Finance for any purpose relating to the administration or enforcement of this Act;
	+ **(d)** to any agency established under an Act of Parliament to which the Minister is, by that Act, required to make available statistics, information and documentation obtained by the Minister under that Act that relate to energy enterprises or corporations that control energy enterprises; and
	+ **(e)** to any person referred to in paragraph 31(2)(b) of the *Petroleum Incentives Program Act*.
* **Marginal note:Idem**

**(2)** The Minister may communicate, disclose or make available the names, Canadian ownership rates and control status of persons to whom certificates have been issued.

* R.S., 1985, c. C-20, s. 18;
* 1991, c. 47, s. 712.

**Marginal note:Evidentiary privilege**

**19** Notwithstanding any other Act or law, no person who obtains information or documentation under this Act shall be required, in connection with any legal proceedings, other than proceedings relating to the administration or enforcement of this Act or criminal proceedings under this Act or any other Act of Parliament, to give evidence relating to any information or documentation that is privileged under this Act or to produce any statement, document, writing or portion thereof containing any of that information or documentation.

* 1980-81-82-83, c. 107, s. 51.

**Regulations**

**Marginal note:Regulations**

**20** The Governor in Council may make regulations

* **(a)** defining "formal equity" with respect to persons other than corporations, partnerships or trusts;
* **(b)** respecting the interests or rights that constitute informal equity;
* **(c)** prescribing the classes or types of interests or rights to acquire formal equity and prescribing the circumstances in which and the persons by whom those interests or rights shall be deemed to have been exercised or acquired;
* **(d)** determining classes of formal equity and prescribing the types of shares, interests or rights that shall be excluded from formal equity;
* **(e)** respecting the calculation or determination of the Canadian ownership rate of any person or class of persons, the authorization of the Minister to make any calculation or determination necessary for those purposes and the manner in which any such calculation or determination shall be made;
* **(f)** prescribing the circumstances in which a person or class of persons shall be deemed not to be Canadian controlled;
* **(g)** respecting the determination of the control status of a person other than a corporation;
* **(h)** respecting the meaning of the words "owned", "owner" and "ownership" for the purposes of this Act and the regulations;
* **(i)** prescribing any other matter or thing that is by this Act to be prescribed; and
* **(j)** respecting such other matters or things as are necessary to carry out the provisions of this Act.
* 1980-81-82-83, c. 107, s. 52.

**Enforcement**

**Marginal note:Artificial transactions**

* **21** **(1)** Whether or not the Minister has made a determination of a Canadian ownership rate in respect of an applicant for a certificate, where the Minister is of the opinion that
	+ **(a)** any agreement, arrangement, transaction or operation affecting the Canadian ownership rate of an investor or applicant would result in a determination of the Canadian ownership rate on the basis of formal equity of the applicant that does not truly reflect the degree of participation of persons having interests or rights in the investor or applicant, and
	+ **(b)** one of the main reasons for the agreement, arrangement, transaction or operation was to achieve the result described in paragraph (a),

the Minister may, at any time, on his own initiative and without any notice or hearing, determine or redetermine the Canadian ownership rate of the applicant having such regard, if any, to that agreement, arrangement, transaction or operation as the Minister considers appropriate in the circumstances.

* **Marginal note:New certificate to be issued**

**(2)** A determination or redetermination pursuant to subsection (1) shall be binding on all persons for the purposes of this Act and the Minister shall, if necessary, issue a new certificate accordingly, stating the Canadian ownership rate or the Canadian ownership rate and control status of the applicant and the effective period of the certificate and, on the issue of a new certificate to any person pursuant to this section, any certificate of that person ceases to be effective as of the day the new certificate is effective.

* 1980-81-82-83, c. 107, s. 53.

**Marginal note:Failure to comply**

**22** Subject to section 23, every person who contravenes or fails to comply with subsection 11(1), section 14, 15 or 17 or the regulations is guilty of an offence punishable on summary conviction and liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year or to both.

* 1980-81-82-83, c. 107, s. 54.

**Marginal note:False information**

**23** Every applicant for a certificate, holder of a certificate, investor or nominee of an investor who, under this Act or the regulations, submits any information or documentation, makes any statement or answers any question, whether in connection with an application for a certificate or otherwise, knowing that the information, documentation, statement or answer is false or misleading or misrepresents or fails to disclose a material fact, is guilty of an offence and liable

* **(a)** on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year or to both; or
* **(b)** on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.
* 1980-81-82-83, c. 107, s. 55.

**Marginal note:Offence by employee or agent**

**24** In any prosecution for an offence under this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

* 1980-81-82-83, c. 107, s. 56.

**Marginal note:Officers, etc., of corporations**

**25** Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

* 1980-81-82-83, c. 107, s. 57.

**Marginal note:Limitation period**

**26** A prosecution by way of summary conviction for an offence under this Act or the regulations may not be instituted more than five years after the time when the subject-matter of the complaint arose.

* 1980-81-82-83, c. 107, s. 58.

**Judicial Review**

**Marginal note:Judicial review**

**27** A person that is directly affected by a determination or redetermination of Canadian ownership rate by the Minister under subsection 7(2), 12(1) or 21(1) may apply for judicial review under the [*Federal Courts Act*](http://laws-lois.justice.gc.ca/eng/acts/F-7) by filing a notice of the application in the Federal Court within 30 days after the determination or redetermination is made, or within any further time that the Court or a judge of the Court may fix or allow before or after the end of those 30 days.

* R.S., 1985, c. C-20, s. 27;
* 1990, c. 8, s. 48;
* 2002, c. 8, s. 123.

[Previous Version](http://laws-lois.justice.gc.ca/eng/acts/C-20/section-27-20021231.html)