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LEGISLATIVE SUMMARY

Bill C-63:

A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative Summary of Bill C-63
(Legislative Summary)

Publication No. 42-1-C63-E

Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-63: A SECOND ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 22, 2017 AND OTHER MEASURES*

1 BACKGROUND

Bill C-63, A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures (short title: Budget Implementation Act, 2017, No. 2)[1] was introduced and read a first time in the House of Commons on 27 October 2017. Following reports without amendment by both the House of Commons Standing Committee on Finance and the Standing Senate Committee on National Finance, the bill was passed by both chambers in early December 2017 and received Royal Assent on 14 December 2017.

As its short and full titles indicate, the purpose of the bill is to implement the government's overall budget policy as presented to the House of Commons on 22 March 2017. Consistent with current legislative practice, it is the second implementation bill for the budget of March 2017. The first, Bill C-44, was passed on 22 June 2017.

Bill C-63 has five parts. Part 1 implements income tax measures concerning, among other matters, anti-avoidance rules, billed-basis accounting and the capital gains exemption on the sale of a principal residence (clauses 2 to 105).

Parts 2 and 3 implement, respectively, certain goods and services tax (GST) and harmonized sales tax (HST) measures (clauses 106 to 164) and excise tax measures (clauses 165 to 168). Note that Part 2 also includes a measure announced on 8 September 2017 regarding the timing requirements for GST/HST rebate applications by public service bodies.

Part 4 concerns coordination with the provinces on cannabis taxation (clauses 169 to 171).

Finally, Part 5, which is subdivided into 13 divisions, implements various measures, notably amendments to a number of Acts, including the *Payment Clearing and Settlement Act* (Bank of Canada oversight powers), the *Canada Labour Code* (more flexible work arrangements and new types of leave) and the *Economic Action Plan 2015 Act, No. 1* (workplace internships) (clauses 172 to 261).

In addition, Part 5 enacts the Asian Infrastructure Investment Bank Agreement Act (Division 2) and implements the *Canadian Free Trade Agreement* entered into by the Government of Canada and the governments of each province and territory (Division 10).

This document provides a brief description of the main measures proposed in the bill by summarizing the substance of each part. For ease of reference, the information is presented in the same order as it appears in the summary in the bill.

2 DESCRIPTION AND ANALYSIS

2.1 Part 1: Implementation of Certain Income Tax Measures Proposed in the 2017 Budget

2.1.1 Elimination of the Classification of Discovery Well Drilling Costs as "Canadian Exploration Expenses"

Under the *Income Tax Act* (ITA),[2] expenses for drilling or completing an oil or gas well in Canada qualify as Canadian exploration expenses (CEEs). Drilling expenses are therefore fully deductible in the taxation year in which they were incurred or in a future taxation year.

Clause 20 of the bill amends the definition of "Canadian exploration expense" in section 66.1(6)(d)(i) of the ITA by adding new clause (C) to the Act. As a result of this amendment, expenditures related to drilling or completing a discovery will no longer qualify as CEEs.

However, such expenses will be considered "Canadian development expenses" (CDEs), as defined in section 66.2(5) of the ITA. CDEs, which are incurred in mining activities, can be deducted from income at a 30% rate according to the declining balance method, while CEEs are 100% deductible in a given year.

According to the Government of Canada, this amendment has been made because the success rates for exploratory drilling have increased substantially in recent decades and, in a majority of cases, discovery wells now lead to production, which makes the wells assets of enduring value.[3] Companies therefore have less need to deduct all their exploration expenses within the same year.

The amendment applies to expenses incurred after 2018, subject to certain grandfathering provisions.

2.1.2 Elimination of the Ability to Reclassify "Canadian Development Expenses" as "Canadian Exploration Expenses"

Certain corporations that incur CDEs or CEEs have access to an income tax incentive mechanism called flow-through shares. This mechanism enables these corporations to renounce CDEs and CEEs, which are deductible from revenue, and pass the unused deduction to investors that purchase flow-through shares in the company. In so doing, these expenses are deemed to have been incurred by the investor and not the corporation and can be used to reduce the investor's taxable income. The goal is to assist junior resource companies that often have difficulty raising capital to finance their exploration and development activities. Also, these companies often lack revenues to fully benefit from CDE and CEE deductions.

Currently, small oil and gas corporations (including any associated corporations) with total taxable capital employed in Canada of less than $15 million are allowed to renounce up to $1 million of CDEs per calendar year and have those expenses reclassified as CEEs in the hands of flow-through shareholders. The reclassification of expenses increases the value of the deduction for flow-through shareholders, since CEEs are 100% deductible, while CDEs are deductible at a rate of 30% per year.

Clause 19 amends section 66(12.601) of the ITA to no longer permit eligible small oil and gas corporations to reclassify the first $1 million of CDEs as CEEs. The change applies to expenses incurred after 2018, subject to certain limited grandfathering provisions.

2.1.3 Changes to the Anti-avoidance Rules for Some Registered Savings Plans

Clauses 67 to 72 of the bill amend Part XI.01 of the ITA to extend to registered education savings plans (RESPs) and registered disability savings plans (RDSPs) anti-avoidance rules that had already been in place for the following registered plans:

- tax-free saving account (TFSA);
- registered retirement savings plan (RRSP); and
- registered retirement income fund (RRIF).

Specifically, clauses 68 to 70 extend to RESPs and RDSPs:

- the advantage rules, which generally aim to prevent the exploitation of the tax attributes of a registered plan (e.g., by shifting returns from a taxable investment to a non-taxable registered plan) (new sections 207.01(1) and 207.05);
- the prohibited investment rules, which generally ensure that investments held by a registered plan are arm's-length portfolio investments (new sections 207.01(1) and 207.04); and
- the non-qualified investment rules, which restrict the classes of investments that may be held by a registered plan (new sections 207.01(1) and 207.05).

These anti-avoidance rules seek to ensure that registered plans do not provide excessive tax advantages unrelated to their respective objectives.

Clauses 57 and 58 make consequential amendments to sections 146.1 and 146.4 of the ITA, respectively. Clause 66 repeals Part XI and of the ITA, which dealt with the taxation of registered plans.

Most of these amendments are deemed to take effect on 23 March 2017.

2.1.4 Elimination of Billed-Basis Accounting

Section 34 of the ITA allows designated professionals (accountants, dentists, lawyers, medical doctors, veterinarians and chiropractors) to elect to use billed-basis accounting for income tax purposes. This type of accounting excludes work in progress from the calculation of income for the taxation year, as this work would be included in income when the work is billed to a client.

Clause 7 of the bill limits the application of the provisions in section 34 to the taxation year that begins before 22 March 2017, and repeals section 34 so that the billed-basis accounting rule is no longer available for professionals. The repeal of section 34 comes into force on 1 January 2024.

In addition, section 10(14) of the ITA provides that professional work in progress is normally included in the inventory of a business if the rule in section 34 did not apply. Clause 2(1) of the bill repeals section 10(14). This amendment also comes into force on 1 January 2024.

Clause 2(2) of the bill adds to the ITA new section 10(14.1), which provides a five-year transitional rule for the purpose of valuing work in progress of a business that is a professional practice. Specifically, for the purposes of computing the income from a business of a taxpayer, the cost and the fair market value of the taxpayer's work in progress is deemed to be 20% of the cost and fair market value of the taxpayer's work in progress at the end of the first taxation year that begins after 21 March 2017. This percentage increases to 40% for the second taxation year, 60% for the third taxation year, 80% after the fourth taxation year and 100% for the fifth taxation year. This amendment applies to taxation years ending after 21 March 2017 and will be repealed effective 1 January 2024.

2.1.5 Enhanced Tax Treatment for Geothermal Equipment

Geothermy is a form of energy recovered from the heat generated deep within the Earth. Geothermal systems "harness the heat energy of rock formations like wind turbines harness wind energy – and convert it into mechanical energy, which in turn is converted into electrical energy."[4]

Under the ITA, Canadian businesses that invest in clean energy generation and energy efficiency equipment can deduct the cost of eligible capital assets on an accelerated basis. As geothermal energy is a renewable energy source, the bill extends the accelerated deductions for the cost of capital investments to a broader range of geothermal projects and expenses. The bill also expands the range of geothermal energy project expenses that are eligible as Canadian renewable and conservation expenses, which can be fully deducted in the year they were incurred.

Specifically, clause 104 of Bill C-63 amends section 1104 of the *Income Tax Regulations*[5] (ITR) by replacing subparagraph (d)(vii) of Class 43.1 in Schedule II to include a broader range of geothermal equipment in the list of expenses that qualify for an accelerated capital cost allowance rate of 30% or 50% per year.

Consequential amendments expand expenses eligible as Canadian Renewable and Conservation Expenses, notwithstanding certain conditions. For example, certain expenses in respect of geothermal wells are now eligible (section 1219 of the ITR, as amended by clause 92 of the bill).

These amendments apply for expenses incurred after 21 March 2017.

2.1.6 Extension of Base Erosion Rules for Canadian Insurers

Clause 53 amends section 138 of the ITA, which is part of Canada's foreign accrual property income taxation regime, to ensure that income earned by Canadian life insurers from business carried on outside of Canada is taxable in Canada. Specifically, income earned by a "designated foreign insurance business" from the insurance of "specified Canadian risks" is to be included when calculating the income of a Canadian life insurer for its business in Canada. A "designated foreign insurance business" is an insurance business carried on by a Canadian life insurer in a country other than Canada, where specified Canadian risks are considered to constitute more than 10% of the gross premium revenue of the business in a taxation year. "Specified Canadian risks" are risks in respect of a person resident in, property located in or business carried out in Canada.

As well, clause 53 adds new anti-avoidance rules to sections 138(2.2), 138(2.4) and 138(2.6) of the ITA to ensure that the income Canadian life insurers earn from insurance swaps – which are agreements where an insurer's foreign affiliate exchanges specified Canadian risks it insures for foreign risks – are subject to Canadian taxation, whether these swaps are conducted through a foreign affiliate or a designated foreign insurance business.

Clause 53 applies to taxation years that begin after 21 March 2017.

2.1.7 Clarification of Factual Control of a Corporation for Income Tax Purposes

Broadly speaking, an individual with "de facto control" over a corporation is an individual who holds influence over that corporation, which if exercised would result in that individual having factual control over the corporation's activities. An individual or corporation (referred to as a "taxpayer") may have de facto control over a corporation. The concept of de facto control is relevant for a variety of provisions in the ITA, including the determination of whether a corporation is a Canadian-controlled private corporation and whether two corporations are "associated" for the purposes of the ITA.

Clause 79 of the bill creates section 256(5.11) of the ITA to specify that the determination of a corporation's de facto control will take into consideration all factors that are relevant in the circumstances. Furthermore, this determination does not necessarily need to include, or be limited to, the consideration of whether the taxpayer has a legal right or ability to effect a change in the board of directors of the corporation, the powers of the corporation, or to exercise influence over any shareholders who have such right or ability.

This measure applies to taxation years that begin after 21 March 2017.

2.1.8 Allowing Taxpayers to Mark to Market Eligible Derivatives

Clause 3 of the bill adds new section 10.1 to the ITA to create an elective mark-to-market regime for eligible derivatives, which are contracts based on the performance – and therefore value – of an underlying entity. Eligible derivatives include:

- swap agreements;
- forward purchase or sale agreements;
- forward rate agreements;
- futures agreements;
- option agreements; and
- any similar agreement so long as the derivative's fair market value can be ascertained.

Derivatives derived from capital property, Canadian resource property, foreign resource property and any obligations on account of a taxpayer's capital are not eligible for the elective mark-to-market regime, nor are derivatives held by a financial institution derived from certain "tracking property" as defined in section 142.2(1) of the ITA.

The mark-to-market regime allows a taxpayer to elect that the eligible derivatives be deemed to be disposed of immediately before the end of the taxation year in exchange for their fair market value, which may result in the taxpayer recognizing a profit or a loss in respect of that derivative. Under this election, the taxpayer does not factually dispose of the eligible derivative – for example, by selling it – but instead merely deems the disposition to have taken place for tax purposes. However, new section 10.1(7) of the Act defers the recognition of these profits or losses until the taxation year in which the eligible derivatives are factually disposed of. Where an election into the regime has been made, the taxpayer is deemed to have reacquired the eligible derivative at the end of the taxation year at an amount equal to the proceeds of its deemed disposition. If this election is not made, the taxpayer would realize the profit or loss in respect of that eligible derivative when it is factually disposed of.

New sections 10.1(1) and 10.1(4) describe the processes for electing to make use of the mark-to-market regime for individuals and financial institutions, respectively. Once made, the election is valid for that taxation year and for all subsequent taxation years unless revoked under new section 10.1(2). New section 10.1(3) limits to a taxpayer's first election the ability of that taxpayer to make an election into the mark-to-market regime for the current taxation year. Any subsequent election will apply on a going-forward basis in order to prevent the taxpayer from electing in and out of the regime with the benefit of hindsight regarding the performance of the eligible derivatives.

The bill makes consequential amendments to sections 18(14)(c), 85(1.12), 85(2), 87(2)(e.41), 87(2)(e.42), 88(1)(e.2), 88(1)(j), 96(3) and 97(2) of the ITA.

These amendments apply to taxation years that begin after 21 March 2017.

2.1.9 Introduction of an Anti-avoidance Rule to Target Straddle Transactions

A straddle transaction is one where a taxpayer simultaneously enters into two or more positions – such as securities, derivatives, certain legal interests and debts, commodities, obligations and currencies – that are, when taken together, expected to generate offsetting gains and losses. The taxpayer then disposes of the position with the accrued loss in order to claim a tax deduction against other income, but defers the realization of the offsetting position that has accrued profit until a subsequent taxation year. By deferring the realization of the offsetting position that accrued profit, the taxpayer subverts the intended tax treatment of the offsetting positions.

Clause 5 of the bill creates a "stop-loss rule" within new sections 18(17) to 18(23) of the ITA. This rule reduces the loss on a disposition by a taxpayer of a particular position in a taxation year by the total of the "unrecognized profit" for each offsetting position. The "unrecognized profit" is the profit that would be realized if the offsetting position were disposed of immediately before the end of the taxation year for proceeds equal to its fair market value. The amount of the disallowed loss is carried forward to the taxation year in which the profit of the offsetting position is recognized.

New section 18(20) provides for the following three exceptions to the application of the stop-loss rule:

- the position consists of certain business-hedging arrangements dealing in commodities that the holder of the position manufactures, produces, grows, extracts or processes;
- the offsetting position is held throughout a 30-day period beginning on the date of disposition of the other position; and
- it is reasonable to conclude that the purpose of the sale of the positions was not to avoid, reduce or defer tax that would otherwise be payable.

New sections 18(22) and 18(23) create anti-avoidance rules that are intended to prevent a deferral of income in situations where connected persons – being a related person or one that entered into a partnership with them – together hold offsetting positions but have different taxation year ends.

The stop-loss rule applies to positions or offsetting positions acquired, entered into, renewed or extended, or becomes owing after 21 March 2017.

2.1.10 Allowing Certain Tax-Deferred Mergers

In Canada, mutual funds may be structured as corporations or as trusts. Under the ITA, mergers are permitted between two mutual fund trusts or a mutual fund trust and a mutual fund corporation on a tax-deferred basis, in order to achieve economies of scale and avoid duplication of expenses. Clause 52 amends section 132.2 of the ITA to allow a mutual fund corporation with multiple classes of shares that contain different investment funds, also known as a switch corporation, to reorganize into multiple mutual fund trusts.

These provisions apply to mergers that occur after 21 March 2017.

Segregated funds are investment funds sold by insurance companies that are similar to mutual fund trusts, but with other characteristics, such as insurance guarantees for a specified percentage of the principal. Clause 54 amends section 138.1 of the ITA, and clause 55 adds section 138.2 to the Act, to allow segregated fund trusts to merge on a tax-deferred basis, in a similar manner as mutual fund trusts.

The amendments to section 138.1 apply to taxation years that begin after 2017, and section 138.2 comes into force on 1 January 2018.

2.1.11 Enhanced Protection of Donated Ecologically Sensitive Land, and Broadened Types of Donations

The Ecological Gifts Program gives Canadian taxpayers the option of making a gift of land or a partial interest in land to an eligible charity. Individuals are eligible to receive a tax credit, and businesses are eligible to receive a deduction from their taxable income. The Program also eliminates the tax on the capital gain associated with the donation of ecologically sensitive land, unless the donation is made to a private foundation.[6]

To better protect donations of ecologically sensitive land and to increase the size of the permitted donations, the bill amends:

- sections 43(2), 110.1(1)(d) and 110.1(5)(b), and paragraph (a) of the definition of “total ecological gifts” in section 118.1(1) of the ITA, such that a gift of a personal servitude – within the meaning of the *Civil Code of Québec* – to which ecologically sensitive land is subject and which has a term of not less than 100 years, is eligible for the tax benefits offered by the Ecological Gifts Program (clauses 11, 39 and 43 of the bill);
- sections 110.1(1)(d)(iii)(B) and 110.1(1)(d)(iii)(C) and subparagraph (b)(i) of the definition set out in section 118.1(1), such that the donation of ecological gifts to a municipality or a municipal or public body performing a function of government in Canada must receive prior approval from the Minister of the Environment or a designated person (clauses 39 and 43 of the bill);
- section 110.1(1)(d)(iii)(D) and subparagraph (*b*)(ii) of the definition set out in section 118.1(1), such that donations of ecological gifts to private foundations are not eligible for the Ecological Gifts Program (clauses 39 and 43 of the bill); and
- section 207.31, such that all the subsequent recipients of an ecological gift that was donated through the Ecological Gifts Program are subject to a tax equivalent to 50% of the fair market value of the gift if they change the use or dispose of it without the consent of the Minister of the Environment or a designated person (clause 73 of the bill).

These amendments apply with respect to gifts, dispositions and changes in use made after 21 March 2017.

2.2 Part 1: Implementation of Other Income Tax Measures

2.2.1 Elimination of Loopholes for the Capital Gains Exemption on the Sale of a Principal Residence

An individual taxpayer can use the principal residence exemption in the ITA to eliminate any capital gain that could be incurred upon the sale of a principal residence. As well, a personal trust can designate a property as its principal residence for a taxation year, and therefore can claim the principal residence exemption when the property is sold. Changes were announced on 3 October 2016 to limit the principal residence exemption amount when a taxpayer is non-resident and to restrict the types of trusts that can designate a property as a principal residence.[7]

Clause 10(1) of the bill amends section 40(2)(b) of the ITA, which sets out the formula to calculate the principal residence capital gains exemption. The exemption permits only one property to be designated as a principal residence for a given taxation year. However, the formula contains a provision, called the "one plus rule," which recognizes that a taxpayer can have two principal residences in the same taxation year when one property is sold and another is bought. The one plus rule thus allows a taxpayer to use the full exemption for any capital gain incurred when selling a principal residence. Clause 10 eliminates the application of the one plus rule for taxpayers that are not resident in Canada in the year the property was bought, and thus the full capital gains exemption cannot be claimed by these taxpayers. This amendment applies to sales that occur after 2 October 2016.

Clause 10(4) of the bill amends section 40(6) of ITA in order to provide transitional rules for the changes to the principal residence exemption. These transitional rules take into consideration that the rule allowing only one principal residence for a taxation year has only been applicable since 1981.

Clause 13 of the bill amends section 54 of the ITA, which defines various terms for the purposes of taxable capital gains and allowable capital losses. The definition for "principal residence" sets out the requirements for a property to be considered a taxpayer's principal residence for a taxation year. For a trust, the property must be designated as the trust's principal residence for the taxation year and the designation must identify each individual who is a specified beneficiary for the trust in that year. A specified beneficiary is an individual who is beneficially interested in the trust and who ordinarily resides in the property or whose spouse or common-law partner or child ordinarily resides in the property. Clause 13 amends the term "principal residence" so that, for taxation years that begin after 2016, only three types of personal trusts are eligible to designate a property as a principal residence:

- certain alter ego trusts, spousal or common-law partner trusts, joint spousal or common-law trusts, or lifetime benefit trusts;
- certain testamentary trusts that are qualified disability trusts; and
- trusts where the specified beneficiary is a Canadian resident whose parents were no longer alive at the beginning of the year, who is a minor, and whose parent was the settlor of the trust.

Clause 10(4) of the bill adds section 40(6.1) to the ITA to provide transitional rules regarding the application of the principal residence exemption and the new definition for principal residence to personal trusts, particularly for those trusts whose residence is no longer eligible for designation as a principal residence.

2.2.2 Additional Authority for Nurse Practitioners for Tax Purposes

Nurse practitioners are registered nurses who have graduated from a nursing program and met the requirements of the jurisdiction in which they practice.

Clause 18 of the bill amends section 63(2)(b) of the ITA to allow a nurse practitioner to certify that an individual is incapable of caring for children because of a mental or physical infirmity for the purposes of the deductibility of child care expenses in computing the individual’s income. This amendment applies to certifications made after 7 September 2017.

Clause 44 of the bill amends section 118.2(2)(l.9) of the ITA to allow a nurse practitioner to prescribe and supervise therapy for the purposes of disability tax credit eligibility. This amendment applies to therapy expenses incurred after 7 September 2017.

Clause 44 of the bill also amends section 118.2(2)(l.92) of the Act to add nurse practitioners to the list of medical practitioners who can prescribe and supervise a therapy plan for the purposes of the eligibility for the medical expense credit. This amendment applies to expenses incurred after 7 September 2017.

Clause 45 of the bill amends section 118.6(3)(b) of the ITA to allow a nurse practitioner to certify for the purpose of the education tax credit that an individual has a mental or physical impairment and that the individual – who is enrolled as a part-time student – cannot reasonably be expected to be enrolled as a full-time student. This amendment applies to certifications made after 7 September 2017.

Clause 58 of the bill amends sections 146.4(1) and 146.4(1.1) of the ITA to allow a nurse practitioner to certify that an individual’s state of health is such that the individual is not likely to survive more than five years. This certification, which is currently performed by medical doctors licensed under the laws of a province, allows the individual to circumvent certain limits placed on the amount of disability assistance payments that can be paid from a registered disability savings plan. These amendments apply to certifications made after 7 September 2017.

Clauses 101 and 103 of the bill amend sections 8302(4)(b)(i) and 8517(6)(b)(ii)(A) of the *Income Tax Regulations*, respectively, in order to permit nurse practitioners to certify that the life expectancy of an individual is significantly shorter than normal for the purposes of the normalized pension rule, which relates to the total lifetime benefits that would be payable to that individual. These amendments apply to certifications made after 7 September 2017.

Clause 102 of the bill amends sections 8503(4)(e) and 8503(4)(f) of the ITR to permit nurse practitioners to provide all medical information necessary to an administrator of a registered pension plan who is determining whether a member of that plan is completely and permanently disabled, and/or that a certain period is a "period of disability" for the purposes of that plan. These amendments apply to certifications made after 7 September 2017.

2.2.3 Small Business Deduction for Qualifying Farmers and Fishers

Budget Implementation Act, 2016, No. 2 amended the ITA to hinder business structures that allowed increased access to the small business deduction.[8] However, this amendment could have the effect of denying "access to the small business deduction for a farmer's or fisher's corporation selling farming products or fishing catches to an … agricultural or fisheries cooperative" of which it is a member.[9]

Clause 48 amends subparagraph (a)(i) of the definition of "specified corporate income" in section 125(7) of the ITA and adds the definition of "specified cooperative income" to that same section in order to clarify that farming and fishing corporations can make use of the small business deduction, even when they sell their products to a farming or fishing cooperative of which they are members.

These amendments apply to the taxation years that begin after 21 March 2016.

2.2.4 Extended Application of Corporate Acquisition of Control Rules for Reverse Takeover Transactions

"Reverse takeover" refers to a series of transactions or events in which a loss corporation ("the acquiring corporation") acquires an income-generating entity ("the target entity"). The reverse takeover usually culminates in an exchange of shares between the acquiring corporation and the target entity ("the particular time"). The reverse takeover enables the income of the target entity to be transferred or allocated to the acquiring corporation and sheltered from tax by applying the acquiring corporation's loss carry-overs.

A reverse takeover therefore seeks to circumvent the rules applicable to a change of control of a corporation. When a change of control of a corporation occurs, its fiscal year is deemed to have ended immediately prior to this change, and a tax return must be filed. The change of control also prevents the corporation's loss carry-overs from being used to offset gains after the change of control.

The purpose of sections 256(7)(c) and 256(7)(c.1) of the ITA is to neutralize the tax effects of the reverse takeover when the acquiring corporation and the target entity are not part of a related or affiliated group prior to the reverse takeover. Under these provisions, control of the acquiring corporation and of each corporation controlled by it is deemed "acquired" at the particular time. However, these provisions apply only to reverse takeovers that involve corporations and those that involve a corporation and a trust or a partnership traded on a public securities exchange.

Clause 79(2) of the bill adds new section 256(7)(c.2) to the ITA to extend the reverse takeover rules to cases where the target entity is an ordinary trust or partnership.

New section 256(7)(c.2) provides the following three exceptions under which the acquiring corporation will not be deemed to have obtained control under this section despite the reverse takeover:

- Under section 256(7)(c.2)(i) of the ITA, an acquisition of control is not deemed to have occurred if, at the particular time, a person affiliated with the target entity owned shares in the corporation with a market value exceeding 50% of the value of all the corporation’s shares issued and in circulation immediately before the particular time.
- Under section 256(7)(c.2)(ii) of the ITA, an acquisition of control is not deemed to have occurred if all the securities of the acquiring corporation were acquired before or during the reverse takeover by one person who, at the particular time, did not control the acquiring corporation and whose securities of the acquiring corporation did not exceed the market value of 50% of the value of all the corporation’s shares issued and in circulation immediately before the particular time.
- Under new section 256(7)(c.2)(iii) of the ITA, an acquisition of control is not deemed to have occurred if control was already deemed to have occurred under either section 256(7)(c.1) or 256(7)(c.2) at the time of an acquisition of shares as part of a reverse takeover.

New section 256(7)(c.2) of the ITA applies to transactions completed after 15 September 2016. It does not apply to a transaction that the parties are obligated to complete pursuant to a written agreement they signed before 16 September 2017 (clause 79(4) of the bill).

2.2.5 Consistency of Rules for Scientific Research and Experimental Development Expenditures

Section 37 of the ITA allows taxpayers to deduct expenditures incurred as part of scientific research and experimental development (SR&ED) activities conducted in Canada.

Clause 8(2) of the bill amends section 37(11) of the ITA to stipulate the information required in support of deductions for SR&ED expenditures. While the previous section 37(11) required a taxpayer to file with the Minister only one form containing the prescribed information, the claimant must now include information concerning the preparer as defined in section 162(5.3) of the ITA. This information includes the identity of the preparer and the arrangement under which the preparer agreed to accept consideration for preparing the SR&ED form.

Pursuant to section 162(5.1) of the ITA, failure to provide claim preparer information in support of a claim to deduct SR&ED expenses may result in a penalty, but it will not prevent the taxpayer from deducting these expenses. Clause 8(2) of the bill introduces section 37(11.1) to the ITA, which states that an SR&ED expenditure will be deductible only if the required information concerning the expenditure is filed with the Minister in the prescribed form.

According to clause 8(3) of the bill, the changes made in clause 8(2) apply only to SR&ED expenditures incurred after 16 September 2016.

2.2.6 Allocation Formula for Taxable Income of Federal Credit Unions

Clause 87(1) of the bill amends the ITR by adding section 404.1, which prescribes rules for determining the amount of a federal credit union's taxable income deemed to have been earned in a province for the purposes of the 10% federal tax abatement. These rules mirror the special rules in section 404 for determining the taxable income deemed to have been earned by a bank in a province.

Specifically, section 404.1(1) provides that, notwithstanding the general rules provided in sections 402(3) and 402(4), the portion of the taxable income deemed to have been earned by a federal credit union in a taxation year in a province in which the credit union has a permanent establishment is to be based on one-third of the total of two factors:

- the proportion of its taxable income for the year that the total salaries and wages paid in the year by the federal credit union to employees of its permanent establishment in the province is of the total of all salaries and wages paid in the year by the federal credit union; and
- twice the proportion of its taxable income for the year that the total amount of loans and deposits of its permanent establishment in the province for the year is of the total amount of all loans and deposits of the federal credit union for the year.

Section 404.1(2) provides that, for the purposes of section 404.1(1), the amount of loans for the year in respect of the federal credit union will be one-twelfth of the total amount of loans outstanding at the close of business on the last day of each month in the year.

Section 404.1(3) provides that, for the purposes of section 404.1(1), the amount of deposits for a taxation year in respect of the federal credit union will be one-twelfth of the total amount on deposit with the federal credit union at the close of business on the last day of each month in the year.

Section 404.1(4) provides that, for the purposes of sections 404.1(2) and 404.1(3), loans and deposits do not include bonds, stocks, debentures, items in transit and deposits in favour of Her Majesty in right of Canada.

Clause 87(2) of the bill stipulates that these amendments are deemed to have come into force on 16 September 2016.

2.2.7 Application of Canada's International Tax Rules

Clauses 27 to 30 and 75 of the bill amend various aspects of Canada's international tax rules.

Clause 27 amends section 90 of the ITA, which describes the upstream loan rules. These rules apply to loans from a foreign affiliate to its Canadian parent corporation. Section 90 states that the tax treatment of upstream loans is equivalent to that of dividends sent from the foreign affiliate to the parent corporation. Clause 27 ensures that the upstream loan rules apply when there has been a reorganization – which includes amalgamation, merger, foreign merger, winding up, or liquidation and dissolution – of the creditor or debtor corporation that is involved in the upstream loan. In general, the amendments deem the new creditor or debtor to be the same as the old creditor or debtor.

These amendments apply to loans received and indebtedness incurred after 19 August 2011 and in respect of any portion of a loan received or indebtedness incurred on or before 19 August 2011 that remained outstanding on 19 August 2014.

Clause 28(1) adds sections 91(1.1) to 91(1.5) to the ITA, to amend the foreign accrual property income (FAPI) taxation regime. FAPI is passive income – such as rent, royalties, or interest – earned by a controlled foreign affiliate (CFA) of a Canadian taxpayer. FAPI must be included in the Canadian taxpayer's income at the end of the CFA's taxation year and the amount of FAPI that is to be included is based on the percentage of shares owned by the taxpayer. However, currently, when a CFA is sold or the corporation ceases to be a CFA during the year due to a decrease in the Canadian taxpayer's equity interest in the CFA, no FAPI is required to be included in income. Clause 28 amends this rule so that an appropriate amount of FAPI, called "stub period FAPI," is included in the taxpayer's income when the CFA is sold or ceases to be a CFA, by deeming the CFA's taxation year to have ended when it was sold or ceased to be a CFA. New section 91(1.4) allows a taxpayer to elect to opt into the stub period FAPI rule when the conditions for inclusion of FAPI in income are not met, and 91(1.5) permits a taxpayer to use an extended period for filing these elections for past taxation years; however, new section 91(1.5) is repealed for taxation years that begin on or after 8 September 2017.

The amendments are deemed to have come into force on 12 July 2013.

Clause 28(3) of the bill amends section 91(4.5) of the ITA to allow for an exception to the FAPI rules that deny deductions for foreign tax, when these deductions are the result of entities or investments being taxed differently in Canada than in other jurisdictions.

This amendment applies to taxation years that end after 24 October 2012.

Clause 29 of the bill amends section 94(3)(b) of the ITA, which sets out the taxation rules for non-resident trusts. It clarifies that, for foreign tax calculations under the ITA, the pooling of a trust's income from another country in which it is resident is not to include income from sources in Canada, unless the income is in the form of dividends or interest.

This amendment applies to taxation years that end after 15 September 2016.

Clause 30 of the bill amends sections 95(1), 95(2)(a.1), 95(2)(a.23), 95(2)(f.13), 95(2)(f.15) and 95(2)(g.04) of the ITA and adds section 95(2)(a.24) to the Act. Generally, section 95 provides definitions, deeming rules, reorganization rules and anti-avoidance rules with respect to the FAPI taxation regime. These amendments include the following:

- An updated definition for "trust company" that includes reference to the *Canadian Payments Act*. This amendment comes into force on 24 October 2001.

- Clarification that revenue from certain securities transactions between a Canadian bank and its foreign affiliates is excluded when calculating the foreign affiliate's gross revenue from the sale of property, which is usually included in FAPI. This amendment applies to taxation years of foreign affiliates that end after October 2012.
- The deeming of certain risks to be "specified Canadian risks" – and thus in relation to a person, property or business in Canada – for a foreign affiliate under certain circumstances. These circumstances include when an affiliate insured or reinsured the risk as part of a transaction or series of transactions in order to avoid application of section 95(2), or when an affiliate enters into an arrangement with respect to the risk with certain entities that are not at arm's length with the foreign affiliate. These amendments apply to taxation years that begin after 21 March 2017.
- Changes to certain rules in relation to currency to be used by foreign affiliates. Specifically, because the Bank of Canada no longer publishes two exchange rates daily, a foreign affiliate can calculate its capital gain in Canadian dollars using the single exchange rate now provided by the Bank of Canada or use another exchange rate accepted by the Minister of National Revenue, if the Bank of Canada does not publish an exchange rate for that currency. These amendments are in force 1 March 2017.
- Allowing a set-off of foreign exchange capital gains and capital losses between a creditor and debtor involved in an upstream loan in cases where the amounts involved in the set-off are not equal and when the debtor and creditor are entities within a corporate group. These amendments apply to a foreign exchange gain or loss for repayment of a debt outstanding on 19 August 2011 where repayment occurs on or before 19 August 2016.

Section 212.3 of the ITA sets out the foreign affiliate dumping rules. Generally, these rules prevent foreign-based multinationals with Canadian subsidiaries from eroding the Canadian tax base by having the Canadian subsidiary make investments in other foreign subsidiaries, which results in the taxable income of the Canadian subsidiary being reduced. The rules also aim to prevent these investments from being sent to the foreign subsidiary without payment of the appropriate non-resident withholding tax, by stipulating that either a Canadian corporation is deemed to have paid a dividend (which is subject to non-resident withholding tax) to the foreign subsidiary, or the Canadian corporation's paid-up capital (PUC) – the amount of money that a corporation has received in exchange for equity – is reduced.

Clause 75 amends section 212.3(1) of the ITA and adds section 212.3(7.1) to the Act to clarify that the foreign affiliate dumping rules apply to a corporation resident in Canada that makes an investment in a non-resident corporation that is not a foreign affiliate of the Canadian corporation and does not deal at arm's length with the Canadian corporation. As well, clause 75 provides the circumstances where the dumping rules will apply when the investment is made in a foreign affiliate of the Canadian corporation or with another entity in the same corporate group, as well as when certain PUC rules that reduce the amount of the deemed dividend apply.

These amendments apply to transactions that occur on or after 16 September 2016 and to certain debt obligations that became owing prior to 16 September 2016 and remain outstanding on 1 January 2017.

2.3 Part 2: Implementation of Certain Goods and Services/Harmonized Sales Tax Measures Confirmed in the 2017 Budget

2.3.1 Changes to the GST/HST Rules Applicable to Certain Pension Plans and Financial Institutions

Under the current rules prescribed by section 172.1 of the *Excise Tax Act* (ETA),[10] an employer that participates in a pension plan is deemed to have collected the GST/HST from the pension entity of a pension plan at the time of the use or consumption by the employer of goods or services with respect to pension plan activities. In addition, the rules under section 172.1 of the ETA allow the pension entity of a pension plan to claim a rebate equal to 33% of the tax it paid in the course of its activities.

Clauses 106, 111 and 114 of the bill make technical amendments to the application of section 172.1 of the ETA to clarify and simplify the rules applicable to pension fund management entities. In particular, these amendments aim to:

- abolish the 33% rebate for the GST/HST deemed to have been collected but not paid by a pension entity;
- allow participating registered charities of a pension plan to deduct the net tax from pension tax adjustments;
- allow pension entities to claim the 33% rebate for tax paid on imported supplies;
- eliminate the possibility that, after the two-year limit, a pension entity may transfer its right to a rebate to employers participating in a pension plan;
- simplify compliance for a pension entity with respect to the repayment of a pension rebate entitlement where that amount has been reduced by a tax adjustment of the employer;
- specify the amount of GST/HST with respect to a net tax deduction where the election to transfer the entitlement to a refund from a pension entity to the employer is made; and
- ensure that the rules regarding deemed supplies do not apply to the portion of a hybrid pension plan that confers benefits through an insurance contract.

These measures generally come into force on 22 July 2016. However, certain relief measures come into force in September 2009, when the rules on the deemed supply and the rebate came into force.

2.3.1.1 Amendments to the Rules that Apply to Certain Financial Institutions

Clauses 107 to 109, 114 and 126 make technical amendments to the GST/HST rules that apply to financial institutions to reflect amendments to the ITA and simplify GST/HST compliance.

In particular, these amendments aim to:

- harmonize the GST/HST rules that apply to investment plans with those of the ETA (section 149(5));
- eliminate the requirement that the entity have members in certain provinces in order to qualify as an investment plan (section 149(5));
- ensure that trust-like arrangements in Quebec are subject to the same GST/HST treatment as trusts in other provinces where the common law applies (section 130.1);
- specify the rules governing HST self-assessment by investment plans, or series of investment plans, created for investors in a single province (section 217.1);
- specify the formula for calculating the HST used by certain financial institutions (section 172.1); and
- facilitate compliance with the formula for calculating the HST used by certain financial institutions (section 172.1).

These measures generally come into force on 22 July 2016. However, certain relief measures come into force in September 2009, when the rules on the deemed supply and the rebate came into force.

2.3.2 Application of GST/HST Rules to Pension Plans that Use Master Trusts or Master Corporations

Clauses 106, 111 and 114 amend sections 157 and 172.1 of the ETA by applying rules on deemed supply to master trusts and master corporations.

Under the deemed supply rules, an employer participating in a pension plan is deemed, at the end of the fiscal year, to make supplies of taxable goods and services acquired by the employer during the year, and in-house resources consumed or used in the year relating to the pension plan. The participating employer is deemed to have collected the tax from the pension entity of the pension plan that holds units in a master pension entity at the time of the consumption, use or supply, by the employer, of the goods or services in activities relating to a master pension entity.

These amendments allow master pension entities to claim the 33% rebate on all GST/HST paid relating to pension fund activities.

This measure generally comes into force on 22 July 2016. However, a clarifying amendment for previous transactions between 2009 and 22 July 2016 provides, solely for this period, that the rules on deemed supply do not apply with regard to the consumption, use or supply by the employer of its goods or services in activities relating to a master pension entity.

2.3.3 Changes to GST/HST Drop Shipment Rules

Rules to increase the international competitiveness of Canadian suppliers are currently provided for in section 179 of the ETA. These rules seek to enable businesses that are not resident in Canada and that are not registered for the purposes of the GST/HST to acquire goods or services in Canada on a tax-free basis if the goods are exported or retained by a person registered for GST/HST in Canada who assumes responsibility for the applicable taxes, if required.

To clarify the legislation and address certain gaps in the current rules, the Department of Finance issued proposed legislative amendments to drop shipment rules on 22 July 2016.[11] These amended provisions have been incorporated into the bill and are intended to ensure that the policy objectives for drop shipment rules are attained.

Specifically, clauses 121, 122 and 125 of the bill, respectively:

- add section 179(2.1) to the ETA, introducing a new owner's certificate that offers a GST/HST-registered owner more flexibility than the drop shipment certificate;
- extend the application of drop shipment rules related to goods leased in Canada by a non-resident business; and
- specify drop shipment rules and their applications.

In general, the amendments come into force after 22 July 2016.

Amendments regarding leased goods come into force once the bill receives Royal Assent.

2.3.4 Application of GST/HST to Supplies of Municipal Transit Services

Part VI of Schedule V to the ETA relates to GST/HST-exempt supplies connected with public sector bodies. Under section 24, a transit authority's supply of public passenger transportation services within a particular municipality and its environs to a member of the public are part of those supplies.

Through several amendments in this Part, Bill C-63 adds a right to use services to descriptions of the supply of municipal transit services. Clause 153 of the bill adds this right to the definition of "municipal transit service" in section 1 of this Part. It also amends the section 1 definition of "transit authority," adding that all, or substantially all, of the supplies made by a transit authority are supplies of public passenger transportation services or rights for individuals to use those services.

Clause 155 adds to section 24 the supply of a right to use a public passenger transportation service that is operated by a transit authority, and it adds section 24.1 to this Part, noting the inclusion of the supply to a transit authority of a right, evidenced by a ticket, pass, voucher or other similar physical or electronic media.

Consequently, for example, if a transit authority supplies a university with a right for the university's students to use its transportation services, the supply of the right to the university and the subsequent supplies to students are exempt from GST/HST. Also, the supply of transit passes from one transit authority to another for the purpose of re-sale is GST/HST-exempt, as are the return of unsold passes.

These amendments apply to any supply made after 22 July 2016 and to any supply made on or before that day, unless an amount was charged, collected or remitted for the supply as or on account of tax under Part IX of the ETA.

2.4 Part 2: Changes to Timing Requirements for GST/HST Rebate Applications by Public Service Bodies

Clause 139(1) of the bill modifies the timing requirements for GST/HST rebate applications made by public service bodies. The measure adds to the ETA new section 259(6.1), which provides that if a rebate in respect of property or a service for a person's particular claim period is not claimed in that period, it may be claimed in a subsequent claim period if the following conditions are met:

- the rebate has not been claimed for any claim period of the person;
- if the person is a registrant, the application for the subsequent claim period is filed by the person within two years of the day on which the person is required to file the return under Division V for the particular claim period; or if the person is not a registrant, within two years of the day that is three months after the last day of the particular claim;
- the person does not, at any time throughout the period, beginning on the first day of the particular claim period and ending on the last day of the subsequent claim period (the specified period), become or cease to be a charity, a public institution, a qualifying non-profit organization, a person designated to be a municipality, or one of the bodies described in sections (a) to (g) of the definition for "selected public service body" in section 259(1) of the ETA (e.g., a hospital authority or a school authority, university or public college established and operated otherwise than for profit); and
- throughout the specified period, the percentages that would be applicable in determining the amount of a rebate under this section, if tax in respect of the property or service had become payable and had been paid by the person on each day in the specified period, remain constant.

Clause 139(2) of the bill provides that this measure applies in respect of subsequent claim periods that end after 8 September 2017.

2.5 Part 3: Amendments to the *Excise Act* with Respect to Taxation of Beer Made from Concentrate on the Premises Where It Is Consumed

Clause 165 of the bill provides that the *Excise Act* (EA)[12] does not apply to the transformation of beer concentrate into beer if the beer is consumed on the premises where it is transformed, by adding section 1.2 to the EA. Thus, beer made from concentrate on the premises where it is consumed is now taxed in a manner that is consistent with other beer products.

Clause 166 amends section 4 of the EA by adding technical specifications related to the terms "beer" and "malt liquor" and adding a definition of "beer concentrate."

Clause 167 adds new section 170(1.1) to the EA to impose excise duties on beer concentrate based on the maximum quantity of beer that could be obtained from the concentrate.

The first 75,000 hectolitres of beer produced benefit from reduced excise duty rates. In adding section 170.1(1.1) to the EA, clause 168 excludes beer concentrate and beer obtained from concentrate from this reduced rate when it is consumed off the premises where it is transformed.

The amendments made by this part are deemed to have come into force on 5 June 2017.

2.6 Part 4: Amendments to the *Federal–Provincial Fiscal Arrangements Act* with Respect to Cannabis Taxation Agreements

The federal government intends to legalize cannabis for recreational use by July 2018, subject to parliamentary approval and Royal Assent.[13] As highlighted in a report by the Office of the Parliamentary Budget Officer, the federal government plans to impose a tax on cannabis sales, which will create new revenues.[14]

Clause 169 of the bill amends section 2(1) of the *Federal–Provincial Fiscal Arrangements Act* (FPFAA)[15] by adding the definition of a "coordinated cannabis taxation agreement" which means a taxation agreement or arrangement between the federal government and a provincial government pertaining to taxes on cannabis.

Clause 170 amends the FPFAA by adding new Part III.2 regarding coordinated cannabis taxation agreements. Sections 8.8(1) and 8.8(2) of Part III.2 give the Minister of Finance, upon the approval of the Governor in Council, the power to enter into and to amend federal–provincial agreements on cannabis taxation. Pursuant to section 8.8(1), coordinated cannabis taxation agreements include matters related to:

- the collection, administration and enforcement of taxes on cannabis;
- the exchange of information acquired in the administration and enforcement of taxes on cannabis, and of other information as it pertains to taxation related to the legalization of cannabis and the distribution of cannabis;
- the accounting for cannabis taxes;

- the implementation of and the transition to a system of taxation for cannabis;
- the payment of cannabis tax revenues by the federal government to a provincial government, the eligibility and timing of such payments, the remittance of overpayments, and the right of the federal government to offset any overpayments against other amounts payable to a province;
- the payment of and accounting for cannabis taxes by the federal government and its agents and subservient bodies, and by provincial governments and their respective agents and subservient bodies;
- the compliance with the Act of Parliament under which the system of taxation for cannabis is administered and its supporting regulations; and
- other issues pertaining to the implementation and administration of the system of taxation for cannabis.

Section 8.81 of Part III.2 gives the federal government, through the appropriate minister, the power to pay a provincial government amounts related to cannabis taxes that have been collected, based on the coordinated cannabis taxation agreements. Section 8.82 of Part III.2 also provides the statutory authority to make those payments.

Clause 171 makes related amendments to section 40(b) of the FPFAA to empower the Governor in Council to make regulations regarding the calculation, timing and manner of making a payment in relation to the taxation of cannabis.

2.7 Part 5: Implementation of Various Measures

2.7.1 Division 1: Amendments to the *Bretton Woods and Related Agreements Act*

Division 1 of Part 5 of the bill amends the *Bretton Woods and Related Agreements Act* (BWRAA).[16] Clause 172 amends section 8(1) of the BWRAA by adding two ways the Minister of Finance can provide financial assistance to the financial institutions listed in this section: the Minister can provide assistance through the issuance of guarantees or through any other manner that the Minister considers appropriate.

Clause 173 amends section 8.1(1) of the BWRAA by increasing to 1 billion Special Drawing Rights (SDRs)[17] the sum the Minister of Finance may lend to any trust or body established by the International Monetary Fund (IMF); the BWRAA previously set this sum at a maximum of $550 million.

By adding section 8.1(1.1) to the BWRAA, clause 173 enables the Minister of Finance to lend to the IMF, at any rate of interest and on any other terms and conditions that the Governor in Council may approve, any sum or sums of money that may be required to assist the organization in fulfilling its purpose of safeguarding global economic and financial stability. The maximum sum that the Minister of Finance may lend under this section is 13 billion SDRs, but the section allows the Governor in Council to fix any other amount.

The addition of section 8.1(4) to the BWRAA through clause 173 enables the Minister of Finance to direct the reassignment of funds subscribed or contributed by Canada, or funds owed to Canada by the IMF, for a similar purpose within the IMF.

Clause 174, which amends the BWRAA by adding section 8.11, states that the Minister of Finance may, under the *Currency Act*, carry out financial transactions in respect of SDRs.

2.7.2 Division 2: Enactment of the Asian Infrastructure Investment Bank Agreement Act

Division 2 of Part 5 of the bill enacts the Asian Infrastructure Investment Bank Agreement Act, which provides the required authority for Canada to become a member of the Asian Infrastructure Investment Bank (the Bank).

Clause 176 contains the text of this new Act. It states that the agreement is approved (section 3), that the Governor in Council may authorize the acceptance of this agreement on behalf of Canada, and that the Governor in Council may take any measure necessary for its implementation, such as making orders or appointments (section 4). The Bank of Canada is the depository for the assets of the Bank (section 6). The Minister of Finance may make payments to the Bank in respect of Canada's initial subscription of shares up to a maximum of US$375 million, or any greater amount that is specified in an appropriation Act (section 7).

The Schedule of the bill contains the Bank's Articles of Agreement, which govern such matters as its functions, capital, governance, and the process for becoming a member and withdrawing membership from the Bank. According to the Bank's Articles of Agreement:

> 1. The purpose of the Bank shall be to: (i) foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors; and (ii) promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions.

Articles 37 and 39 of the Schedule indicate that a member country is entitled to withdraw from the Bank by providing at least six months' notice; the Bank shall then arrange for the repurchase of the country's shares by the Bank as a part of the settlement of accounts with that country.

2.7.3 Division 3: Responsibility for International Development Financing Agreements

Clauses 177 to 179 provide the Minister of Foreign Affairs with responsibility for three administrative agreements entered into by the Government of Canada and the International Finance Corporation (IFC) in 2011. Established in 1956, the IFC is one of five organizations that form the World Bank Group, and is owned by its 184 member states, including Canada.[18]

Two of the agreements relate to the IFC–Canada Climate Change Program, created to promote private sector investment in clean energy projects through the provision of concessional financing and advisory services.[19] Since 2011, this US$274-million trust fund has committed US$193 million to clean energy projects in the developing world.[20]

The third agreement relates the Government of Canada's support for the IFC's Private Sector Window, which is part of the Global Agriculture and Food Security Program, a multilateral financing mechanism supporting agriculture and food security in poor countries.[21] The Private Sector Window provides financing to small and medium-sized agri-businesses and farmers to increase productivity, support innovation and reduce risk.[22]

2.7.4 Division 4: Amendments to the *Canadian Deposit Insurance Corporation Act*

Under the *Canada Deposit Insurance Corporation Act* (CDICA),[23] one of three resolution processes is used to deal with an insolvent federally regulated financial institution:

- an "open bank" resolution, in which the Canada Deposit Insurance Corporation (CDIC) has temporary control of the financial institution;
- a bridge bank resolution, where the CDIC assigns assets to a bridge bank; or
- a forced sale resolution, where the CDIC sells or assigns assets to third parties.

Clause 180 of the bill amends section 39.15 of the CDICA to clarify the status of eligible financial contracts (EFCs) upon the insolvency of a financial institution. EFCs – which include financing arrangements and derivatives, futures and securities agreements – are provided special treatment upon the insolvency of a financial institution: their termination is temporarily stayed due to the possible destabilizing effects the termination of these contracts could have on the domestic and global economy. As a result of the amendments, counterparties to an EFC can continue to partake in certain actions with respect to the EFC as long as the actions are not related to the insolvency.

Clauses 180(2) to 180(6) of the bill amend sections 39.15(7), 39.15(7.01), 39.15(7.1), 39.15(7.101) and 39.15(7.102) of the CDICA to make clear that a counterparty can exercise remedies for failure to satisfy an obligation under the EFC, take financial collateral to satisfy any ongoing or existing payment, delivery or settlement obligations, and exercise any netting or set-off rights, provided these actions are not in relation to the resolution process for an insolvent financial institution.

Clause 180(7) of the bill amends section 39.15(7.11) of the CDICA to ensure that any provision in an EFC is of no force or effect if it permits anything contrary to section 39.15(7.1) of the CDICA or prevents a financial institution or a bridge institution from having the right to deal with the financial institution's assets.

2.7.5 Division 5: Amendments to the *Bank of Canada Act*

Clause 185 of the bill amends section 18(h) of the *Bank of Canada Act*[24] to indicate that the Bank of Canada can make loans to members of the Canadian Payments Association and take security on those loans, including security in any property, or take an assignment or transfer of a member's rights in any real property, including a mortgage or hypothec.

Clause 187 of the bill is a coordinating amendment that states that when both section 266 of the *Economic Action Plan 2014 Act, No. 2* and clause 185 of Bill C-63 are in force, section 18(h) of the *Bank of Canada Act* will be amended to include a reference to conditions for loans from the Bank of Canada to a central cooperative credit society or local cooperative credit society.

Clause 186 of the bill amends section 39.15(6) of the CDICA so that the Bank of Canada and the CDIC are exempt from any stays in an insolvency resolution with respect to their security agreement for rights to real property in Canada.

2.7.6 Division 6: Amendments to the *Payment Clearing and Settlement Act*

Clauses 188 to 193 of the bill amend the *Payment Clearing and Settlement Act* (PCSA)[25] in order to expand the Bank of Canada's oversight powers with respect to systemic risk in the Canadian financial sector.

Clause 189(1) of the bill amends the factors pursuant to which the Governor of the Bank of Canada can issue a directive in writing under section 6(1) of the PCSA to a clearing house if he or she is of the opinion that systemic risk is being or is likely to be inadequately controlled. These factors are currently limited to:

- the operation of the clearing and settlement system; or
- any actual or anticipated acts or omissions of the clearing house or of a participant.

The bill adds additional factors to be taken into account:

- the design of the clearing and settlement system;
- the ownership or control of the clearing and settlement system;
- aspects of organizational structure or corporate governance of the clearing house that are related to risk management; and
- the management or operation of the clearing house.

Clause 189(2) of the bill amends section 6(2) of the PCSA to allow the Governor to issue a directive in writing requiring a participant to take corrective measures if he or she is of the opinion that systemic risk "could be" inadequately controlled. The current formulation requires that the risk "is being" inadequately controlled.

Clause 189(3) of the bill amends section 6(2)(c) of the PCSA by replacing the words ”is being” by “could be” and adding the words “actual or anticipated” before “act or omission.” The effect of this change is that the Governor’s opinion can be based on potential risks or anticipated omissions and not only on acts or omissions that have actually occurred.

Clause 189(4) of the bill adds section 6(2.1) to the PCSA. Pursuant to the new provision, in determining the corrective measures that are necessary, the Governor shall take into account the nature, severity and imminence of the risk and any other risk-related factors that he or she considers appropriate.

Clause 190 of the bill adds sections 6.1(1) and 6.1(2) to the PCSA. Section 6.1(1) provides that the Governor must give a clearing house or a participant an opportunity to make representations before he or she issues a directive. However, pursuant to new section 6.1(2), the Governor has the right to issue a directive under section 6 without providing a clearing house or a participant with the opportunity to make representations, if the Governor is of the opinion that providing such an opportunity would undermine the effectiveness of the directive. Such a directive is in effect for a period of no more than 15 days, but can be extended once, in writing, for a further period of no more than 15 days.

Clause 191 of the bill replaces section 9 of the PCSA and changes the heading of the section from “Notice of Changes” to “Notice and Approvals.” Current section 9 requires a clearing house to provide the Bank of Canada with “reasonable notice” before making changes “of a significant nature” to its clearing and settlement system. Clause 191 amends section 9(2) to require a clearing house to provide reasonable notice concerning any “changes” to the clearing and settlement system in some instances and any “significant changes” to the system in others. Amended section 9(1) clarifies that a change is significant if it could reasonably be expected to have a material impact on the efficiency, safety or soundness of the designated clearing and settlement system. As well, new section 9(3) requires that the Governor approve any significant changes that he or she believes would affect the control of risk. Lastly, amended section 9(4) requires that a clearing house inform the Governor of any changes to, among other things, the composition of the board of directors or the appointed auditor of the clearing house.

Under section 13.2 of the PCSA, the Bank of Canada may enter into an agreement with a clearing house or a participant in respect of

- netting arrangements;
- risk-sharing and risk-control mechanisms;
- certainty of settlement and finality of payment;
- the nature of financial arrangements among participants;
- the operational systems and financial soundness of the clearing house; and
- any other matters pertaining to systemic risk or payments system risk.

Clause 192 of the bill adds "the exercise of the Bank's powers and the performance of its duties and functions" to this list.

Clause 193 of the bill amends section 22.1(2) of the PCSA by replacing the words "poses, or is likely to pose" with "could pose" so that the Governor could consider whether a foreign bank or foreign institution's participation in a clearing and settlement system could pose a systemic risk to the Canadian financial system.

2.7.7 Division 7: Amendments to the *Northern Pipeline Act*

The Northern Pipeline Agency was established under the *Northern Pipeline Act* (NPA),[26] enacted in 1978. The Agency is the federal regulator of the Canadian portion of the Alaska Highway Gas Pipeline (AHGP), and operates on a fully cost-recovered basis.

Each fiscal year, the Agency receives an allocation of funding from the Main Estimates for its operating costs. The NPA authorizes the Agency to recover costs related to its responsibilities to companies holding a certificate of public convenience and necessity under the NPA in accordance with the *National Energy Board Cost Recovery Regulations*.

The only holder of a certificate of public convenience and necessity issued under the NPA is Foothills Pipe Lines Limited, a wholly owned subsidiary of TransCanada PipeLines Limited, which is a subsidiary of TransCanada Corporation.

The AHGP project seeks to construct a natural gas pipeline from the North Slope of Alaska to the lower 48 U.S. states via a route through Yukon, British Columbia, Alberta and Saskatchewan. While the southern section of this pipeline has been built and is now in operation, the 1,555-kilometre northern section through Yukon and British Columbia has not. In 2013, TransCanada PipeLines Limited advised the Agency that no further work on the northern portion of the pipeline was planned for the time being, and that it intended to maintain its AHGP assets.[27] TransCanada PipeLines Limited is now awaiting further commercial interest in the project before recommencing.[28] As a result of this decrease in activities, the Agency's operational costs have declined.

The Agency's annual allocation of funding from the Main Estimates is based on estimated costs using a formula set out in the *National Energy Board Cost Recovery Regulations*, and the Agency is required to fully recover these costs from companies it regulates. However, the regulations were designed for multiple, operational pipelines and not for a single non-operational pipeline with fluctuating levels of project activities each year. As a result, the Agency can receive funding in excess of its actual operating costs, which TransCanada PipeLines Limited is obliged to pay in full. These excess funds are shown as a deferred revenue balance in the federal government's accounts.

Clause 194 of the bill amends the cost-recovery provisions of the NPA to allow for the annual recovery of the actual, rather than the estimated, costs (section 29 of the NPA).

The amendment makes any certificate of public convenience and necessity issued to a company under the NPA subject to the condition that the company pay the Receiver General an amount equal to the actual costs incurred by the Agency in the previous fiscal year attributable to the Agency's responsibilities to that company. This payment is to be made annually, and provisions for invoicing, payment deadlines and interest rate for late payments are specifically included.

2.7.8 Division 8: Amendments to the *Canada Labour Code*

Division 8 of Part 5 of the bill amends Part III of the *Canada Labour Code* (CLC),[29] with the objective of providing greater flexibility in work arrangements. Part III of the CLC establishes the federal labour standards that apply to employees and employers in federally regulated works, undertakings or businesses. Federal public service employees, however, are not covered under Part III of the CLC.

2.7.8.1 Changes to Modified Work Schedule Provisions

Under current sections 170(1), 170(2), 172(1) and 172(2) of the CLC, an employer may establish, modify or cancel a work schedule under which the hours of work exceed either the standard hours (namely, eight hours in a day and 40 hours in a week) or the maximum hours of work (namely, 48 hours in a week), subject to approval by at least 70% of the affected employees or a trade union. Where the employees are not subject to a collective agreement, the employer is required to post a notice related to the work schedule in readily accessible places where it is likely to be seen by the affected employees, for at least 30 days before it takes effect, in accordance with sections 170(3) and 172(3) of the CLC.

Clauses 195(1), 195(2), 196(1) and 196(2) of the bill amend sections 170(1), 170(2), 172(1) and 172(2) of the CLC to specify that the modified work schedule provisions also apply in respect of one employee, by replacing the term "employees" with "one or more employees."

Sections 170(2) and 172(2) of the CLC are further amended by clauses 195(3) and 196(3) of the bill to provide that, where the employee is not subject to a collective agreement, the establishment, modification or cancellation of one employee's schedule must be approved in writing by that employee (new sections 170(2)(b)(i) and 172(2)(b)(i)). The requirement to have the approval of at least 70% of the affected employees, however, applies in the case of a schedule for more than one employee (new sections 170(2)(b)(ii) and 172(2)(b)(ii)).

Finally, clauses 195(4) and 196(4) of the bill add sections 170(4) and 172(4) to specify that the requirement to post a notice does not apply when the establishment, modification or cancellation of one employee's schedule results from a flexible work arrangement request.

2.7.8.2 Changes to Overtime Provisions

Under current section 174 of the CLC, when an employee works in excess of the standard hours of work (namely, eight hours in a day and 40 hours in a week), the employee is entitled to overtime pay at a rate of wages that is, at a minimum, one and one-half times the regular rate.

Clause 197 of the bill replaces the text of section 174 with new provisions under the following new titles:

- “Shift changes” (new sections 173.1(1) to 173.1(3));
- “Overtime pay or time off” (new sections 174(1) to 174(6)); and
- “Right to refuse” (new sections 174.1(1) to 174.1(4)).

Specifically, where an employer makes changes to a work period or shift, or adds another work period or shift to the employee’s schedule, the employer must provide notice as follows:

- in the case of a change, written notice must be provided at least 24 hours before the original or modified work period or shift is set to begin, whichever is earlier; and
- in the case of an addition, written notice must be provided at least 24 hours before the work period or shift that was added is set to begin (new section 173.1(1)).

The requirement for notice, however, does not apply if the change or addition is necessary to deal with a situation that the employer could not have reasonably foreseen and that presents, or could reasonably be expected to present, an imminent or serious threat (new section 173.1(2)). Nor does it apply in relation to a change or addition resulting from a flexible work arrangement request (new section 173.1(3)).

Employees who work overtime are entitled either to overtime pay as already provided for in the legislation or, subject to certain conditions, to a minimum of one and one-half hours of time off with pay for each hour of overtime worked (new section 174(1)).

Specifically, an employee is entitled to time off for overtime worked only if, at the employee’s request, an agreement in writing is entered into by the employee and their employer for this purpose, and the time off is taken within three months from the end of the pay period in which the overtime was worked. A longer time period applies if set out in a collective agreement or, where not applicable, as established in a written agreement entered into by the employee and the employer (new section 174(2)). In the latter case, the longer time period cannot exceed 12 months (new section 174(3)).

Further, where the employee does not take all or part of the time off within the applicable period, the employer must provide overtime pay within 30 days of the end of this period, at a rate of wages that is, at a minimum, one and one-half times their regular rate (new section 174(4)). Overtime pay is also provided where the employment is terminated, in which case payment must be made within 30 days of the termination (new section 174(5)). These provisions continue to apply in the event of a transfer from one employer to another of any particular federal work, undertaking or business, or part thereof, as this is deemed continuous employment under the CLC (new section 174(6)).

An employee may refuse to work the overtime requested by an employer in order to fulfill a family responsibility provided that, despite having taken reasonable steps to make alternative arrangements, the employee must still carry out that responsibility (new sections 174.1(1) to 174.1(2)). The provision regarding the right to refuse to work overtime, however, will not apply where the overtime is necessary in order to deal with a situation that the employer could not have reasonably foreseen and that presents, or could reasonably be expected to present, an imminent or serious threat (new section 174.1(3)).

An employer must not dismiss, suspend, lay off, demote or discipline an employee who has refused to work overtime in order to fulfill a family responsibility; nor can the refusal be taken into account in any decision to promote or train the employee (new section 174.1(4)).

Finally, clause 198 of the bill repeals section 175(2) of the CLC. This provision prevented the Governor in Council from making regulations to modify the application of certain provisions of the CLC, or to exempt classes of employees from the application of specific provisions (including those related to overtime), unless an inquiry concerning the affected employees had been carried out and reported on.[30]

2.7.8.3 Creation of Flexible Work Arrangements

Clause 199 of the bill provides for the introduction of flexible work arrangements through new section 177.1 of new Division I.1 of the CLC. Under the new provisions, an employee who has completed six consecutive months of continuous employment with one employer may request a change with respect to the number of hours that the employee is required to work, the work schedule, the location of work, and any other terms and conditions of employment that apply to the employee and that are prescribed by regulation (new section 177.1(1)). This request must be made in writing and include specified information, including the employee’s opinion on the effect that the requested change would have on the employer and any suggestions the employee may have for managing this effect (new section 177.1(2)).

An employer who receives a flexible work arrangement request must either grant the request, offer to grant the request in part or to make an alternative change, or refuse the request based on one or more of the following grounds:

- the change would result in additional costs that would be burdensome to the employer;
- the change would have a detrimental impact on the quality or quantity of the work within the employer’s establishment, on the ability to meet customer demands, or on any other performance aspect;

- the employer is unable to reorganize work among existing employees or to recruit additional resources to manage the change;
- insufficient work would be available for the employee as a result of the change; and
- any ground prescribed by regulation (new section 177.1(3)).

The employer must give written notice of the decision within 30 days of receiving the request. Where an employer has offered to grant the request in part or to make an alternative change, or has simply refused the request, the employer must include reasons for this decision in the written notice (new section 177.1(4)).

Clause 213 of the bill adds section 251.01(4.1) to the CLC to provide that the existing mechanism for complaints in writing to an inspector applies to a refusal based on grounds other than those listed above, or if the employer has failed to provide the employee with written notice of the decision.

Clause 199 further provides that, where a term or condition of employment is contained in a collective agreement, the employer must not make any changes to it unless agreed upon by the employer and the trade union in writing (new section 177.1(6)). In addition, where there is another provision under Part III of the CLC or under any regulations made under this part authorizing the employer to make such changes, the employer must instead abide by that provision (new section 177.1(5)).

An employer must not dismiss, suspend, lay off, demote or discipline an employee because the employee has made a flexible work arrangement request; nor can the employee's request be taken into account in any decision to promote or train the employee (new section 177.1(7)). In addition, flexible work arrangement requests are not to place a limit on the employer's duty to accommodate an employee under any other Act (new section 177.1(9)).

The amendments in clause 199 of the bill also give the Governor in Council the authority to make regulations limiting the number of flexible work arrangement requests that an employee may make in a year, and specifying the information that must be included in an employer's notice of the decision or in a written agreement entered into by the employee and the employer with respect to the partial granting of a request or alternative changes (new section 177.1(8)).[31]

2.7.8.4 Changes to Annual Vacation Provisions

Under current sections 184 and 185 of the CLC, an employee is entitled to at least two weeks of vacation with pay annually or, after six consecutive years of employment with one employer, to at least three weeks of vacation with pay annually. Vacation must be granted no later than 10 months after the completion of the year entitling the employee to that vacation, with employers being required to pay employees their accumulated annual vacation pay when they take that vacation. Clauses 200 and 201 of the bill amend these provisions to allow employees to take their vacation in more than one period and to receive a proportion of their accumulated annual vacation pay for each period taken (new section 184.1 and amended section 185(b)).

Existing section 187 of the CLC provides that, where one or more general holidays occur during an employee's annual vacation, the vacation time to which the employee is entitled may be extended by one day for each general holiday and the employer is required to pay wages to the employee for those general holidays in addition to the vacation pay. Clause 202 of the bill amends this provision by adding sections 187.1 and 187.2.

Specifically, under the new provisions, an employee may interrupt annual vacation in order to take another type of leave of absence, including maternity leave, parental leave, compassionate care leave, family responsibility leave, leave for victims of family violence, leave for traditional Aboriginal practices, or bereavement leave. An employee may also interrupt vacation to be absent from work due to sickness or work-related illness or injury (new section 187.1(1)).

Where an employee interrupts annual vacation to take a leave or to be absent from work and resumes the vacation immediately at the end of that period, the existing protections provided in sections 209.1, 239(1.1), 239.1(3), 239.1(4) and 247.93 to 247.95 of the CLC apply to the employee as if the employee had not resumed the vacation before returning to work (new sections 187.1(2) to 187.1(5)). For example, in the case of maternity leave, the employee is entitled to be reinstated in the position occupied when the leave of absence from employment began.

An employee may also postpone an annual vacation until after the end of any of the leaves or periods of absence described above (new section 187.2(1)).[32] Employees who interrupt annual vacation, or simply choose to postpone it, must abide by various notice requirements (new sections 187.1(6), 187.1(7) and 187.2(2)).

2.7.8.5 Changes to General Holiday Provisions

Under Part III of the CLC, employees are entitled to the following general holidays with pay each year: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day. Under current sections 195(1) and 195(2) of the CLC, an employer may substitute any other holiday for a general holiday, subject to approval by at least 70% of the affected employees or a trade union. Where the employees are not subject to a collective agreement, the employer is required to post a notice of the substitution in readily accessible places where it is likely to be seen by the affected employees, for at least 30 days before it takes effect, in accordance with section 195(3) of the CLC. The substituted holiday in both cases will be deemed to be a general holiday under Part III of the CLC.

Clause 203(1) of the bill amends sections 195(1) and 195(2) of the CLC to specify that the substituted holidays provisions also apply for one employee, by replacing the term "employees" with "one or more employees."

It further amends section 195(2) of the CLC to provide that, where the employee is not subject to a collective agreement, that employee must approve the substitution in writing (new section 195(2)(a)). The requirement to have the approval of at least 70% of the affected employees, however, applies where the substitution affects more than one employee (new section 195(2)(b)).

Clauses 203(1) and 203(2) of the bill also amend various portions of sections 195(1) and 195(3) of the CLC to replace the term “holiday” with “day,” such that any other day (instead of any other holiday) may be substituted for a general holiday. Finally, clause 203(3) of the bill adds section 195(4) to provide that the requirement to post a notice when employees are not subject to a collective agreement does not apply to a substitution resulting from an employee’s request for a flexible work arrangement.

2.7.8.6 Creation of New Leaves of Absence from Employment

Clause 205 of the bill amends the heading of Division VII of Part III of the CLC, which lists various leaves of absence, to add the following new leaves:

- family responsibility leave;
- leave for victims of family violence; and
- leave for traditional Aboriginal practices.

Further, clause 206 of the bill adds sections 206.6, 206.7 and 206.8 to provide for the introduction of these three new leaves of absence, respectively.

Under the new provisions for family responsibility leave, an employee who has completed three consecutive months of continuous employment with one employer is entitled to a leave of absence of up to three days in a calendar year in order to carry out responsibilities related to the health or care of any of family members, or to the education of any of family members who are under 18 (new section 206.6(1)). For the purposes of this leave, the Governor in Council may make regulations specifying the persons who constitute the employee’s family members (new section 206.6(4)).

In addition, an employee who is a victim of family violence, or who is the parent of a child who is a victim of family violence, is entitled to a leave of absence of up to 10 days in a calendar year. The purpose of this leave is to enable the employee to seek and obtain the necessary services in respect of such violence, including medical attention for themselves or the child, psychological or other professional counselling, legal or law enforcement assistance, or temporary or permanent relocation (new section 206.7(2)). An employee is not entitled to this leave of absence if the employee is charged with an offence related to any act of family violence or if it is probable, considering the circumstances, that the employee committed that act (new section 206.7(3)). For the purposes of this leave, a child is a person under 18, while a parent is a person who is the biological or adoptive parent of a child, has the custody of or is the legal guardian of a child, or is someone with whom a child is placed for adoption (new section 206.7(1)).

Finally, an employee who is an Aboriginal person and who has completed three consecutive months of continuous employment with one employer is entitled to a leave of absence of up to five days in a calendar year. The purpose of this leave is to enable the employee to engage in traditional Aboriginal practices, including hunting, fishing and harvesting (new section 206.8(1)). For the purposes of this leave, the term “Aboriginal” means Indian, Inuit or Métis (new section 206.8(4)).

Additional amendments allow employees to take their leave in one or more periods, subject to specified requirements. These and other particulars with respect to the administration of the new leaves of absence discussed above are provided under new sections 206.6(2) to 206.7(5), 206.8(2) and 206.8(3).[33]

Clause 209(3) of the bill amends section 209.4 of the CLC to authorize the Governor in Council to make regulations with respect to the new leaves of absence, including defining the term "family violence," prescribing cases in which an employee is not entitled to the leave for victims of family violence (other than those where the employee has been charged with an offence related to any act of family violence or where it is probable that the employee committed that act), and specifying the supporting documentation an employer may request within this context (new sections 209.4(h.1) to 209.4(h.3)).[34]

2.7.8.7 Bereavement Leave

Under current section 210(1) of the CLC, an employee is entitled to bereavement leave for the death of an immediate family member. This leave may be taken for up to three consecutive working days, beginning on the day after the death occurs. Under section 210(2) of the CLC, an employee is entitled to such leave with pay at the employee's regular rate of wages for normal hours of work, provided the employee has completed three consecutive months of continuous employment with one employer.

Clause 210 of the bill amends section 210(1) of the CLC to provide that an employee is entitled to bereavement leave of up to five days, beginning on the day the death occurs and ending six weeks after the latest of the days on which any funeral, burial or memorial service of that immediate family member occurs. Additional amendments introduced by clause 210 allow employees to extend a leave of absence beyond five days and to take leave in one or two periods, subject to specified requirements (new sections 210(1.1) to 210(1.3)).

Clause 210 of the bill amends section 210(2) of the CLC to provide that an employee who has completed three consecutive months of continuous employment with one employer is entitled to bereavement leave with pay for "the first three days of the leave," at the employee's regular rate for normal hours of work.

2.7.8.8 Coordinating Amendments

Clause 215(1) provides that, on the first day on which both clause 267(3) of the *Budget Implementation Act, 2017, No. 1* and clause 209(2) of the current bill come into force, the text of section 209.4(g) of the CLC will be amended so that it also applies in relation to maternity leave, parental leave, leave related to critical illness of an adult, family responsibility leave, and leave for traditional Aboriginal practices. Under current section 209.4(g), the Governor in Council may make regulations prescribing shorter periods of continuous employment, but solely for the purposes of the leave related to critical illness of a child and the leave related to death or disappearance of a child.

Clause 215(2) indicates that, on the first day on which both clauses 356(1) of *Budget Implementation Act, 2017, No. 1* and clause 197 of the current bill come into force, the text of new section 246.1(1)(a) of the CLC will be amended so that it also applies to employer actions that are in contravention of employee protections related to the refusal to work overtime in order to fulfill a family responsibility or related to a flexible work arrangement request.[35] Section 246.1(1)(a) is enacted by the *Budget Implementation Act, 2017, No. 1*, and is not yet in force. It provides employees with the right to make a written complaint directly to the Canada Industrial Relations Board if they believe that their employer has taken certain types of reprisals against them (such as a dismissal, suspension, lay off or demotion) for reasons prohibited under specific sections of Part III of the CLC.

2.7.8.9 Coming into Force

Clauses 216(1) and 216(2) of the bill provide for the coming into force of the CLC amendments described above, on a day to be fixed by order of the Governor in Council. The provisions have been sorted into two separate groups, each of which may come into force on a separate date. These groups are:

- clauses 195 to 204 and clauses 210 to 214 of the bill; and
- clauses 205 to 209 of the bill (introducing the three new leaves of absence).

2.7.9 Division 9: Amendments to the *Economic Action Plan 2015 Act, No. 1*

Division 9 of Part 5 of the bill amends section 167(1.2) of the CLC introduced in the *Economic Action Plan 2015 Act, No. 1* in relation to interns. This provision is not yet in force.

Section 167(1.2) of the CLC provides that the protections under Part III of the CLC do not apply with respect to “any person who is not an employee but who performs for an employer … activities whose primary purpose is to enable the person to acquire knowledge or experience,” if the internship fulfills the requirements of a prescribed educational program, or if the internship meets the following criteria:

- the activities involved are not performed for more than four consecutive months or the equivalent in a one-year period;
- the benefits of the activities accrue mostly to the person;
- the employer supervises the person and the person’s activities;
- the activities are neither a prerequisite for, nor a promise of, future employment;
- the person does not replace any employee; and
- the person is advised in writing that remuneration will not be made.

Clause 217 of the bill amends section 167(1.2) of the CLC to delete the six-criteria exception. In turn, the exception that provides that Part III of the CLC does not apply in relation to internships undertaken to fulfill the requirements of a formal educational program remains, though subject to a modified set of labour standards to be specified in regulations.[36]

2.7.10 Division 10: Implementation of the *Canadian Free Trade Agreement*

Clause 219 of the bill enacts the Canadian Free Trade Agreement Implementation Act which implements the *Canadian Free Trade Agreement* (CFTA) that was announced on 7 April 2017.

Sections 3 and 8 of the Canadian Free Trade Agreement Implementation Act identify the Act's purpose and provide for the naming of any member of the Queen's Privy Council as the designated minister for the purposes of any provision of the Act.

Sections 9 through 11 outline a procedure and conditions according to which an order issued under the CFTA's dispute-settlement chapter – Chapter 10 – can be made an enforceable, binding and final order of the Federal Court. When warranted by Article 1013 of the CFTA, section 12 authorizes the Governor in Council to suspend rights and privileges granted to a province under the CFTA or any federal law, and to modify or suspend the application of any federal law with respect to a province.

Sections 13 and 15 through 17 authorize the making of certain appointments by the Governor in Council or the designated minister, including in relation to the Committee on Internal Trade, as well as the CFTA's committees, working groups and dispute-settlement rosters. Section 14 requires the Government of Canada to pay its share of the Internal Trade Secretariat's annual budget.

Clauses 224(1) and 225 of the bill replace sections 22.1(3)(b) and 22.2(1) of the *Department of Public Works and Government Services Act*, so that they refer to the CFTA, and specific provisions of the CFTA, instead of the *Agreement on Internal Trade* and provisions of that agreement. Clause 226 makes a similar change to the *Procurement Ombudsman Regulations* by replacing section 9(1)(a).

Clause 221 of the bill adds new provisions to the *Energy Efficiency Act* (EEA).[37] Among other things, these provisions allow the Minister of Natural Resources to amend certain regulations made under section 20(1)(b), 20(1)(d) or 25(b) of the EEA to maintain harmonization between a requirement[38] of the regulations and the requirements of provincial and foreign governments, as well as international organizations of states. For example, the Minister can:

- update an erroneous reference to particular documents;
- modify specific energy efficiency standards;
- provide for certain testing of energy-using products; and
- prescribe specified information that dealers shipping such products from one province to another or importing them into Canada must provide under some circumstances.

Clause 222 of the bill repeals section 26 of the EEA, which requires certain proposed regulations under sections 20, 22 and 25 of that Act to be published in the *Canada Gazette* at least 75 days before the day they are to take effect.

Clause 223 of the bill amends section 89.3 of the *Financial Administration Act* to allow the Governor in Council to give a directive under section 89(1) of that Act to any parent Crown corporation for the purposes of implementing any relevant provision of the CFTA.

As a result of the implementation of the CFTA, clause 228 of the bill repeals the *Agreement on Internal Trade Implementation Act*. Clause 227 repeals the *Timber Marking Act*.

Pursuant to clause 229, the provisions contained in Division 10 of Part 5 of the bill are deemed to have come into force on 1 July 2017.

2.7.11 Division 11: Amendments to the *Judges Act*

Division 11 of Part 5 of the bill (clauses 230 to 259) amends the *Judges Act*[39] mainly in three ways.

First, it changes the title of "senior judge" to "chief justice" for the superior trial courts of the territories and deletes the definition of "senior judge" from the Act.

Second, it authorizes the payment of a salary to a second Associate Chief Justice of the Court of Queen's Bench of Alberta.

Third, it allows for the payment of annuities, in certain circumstances, to judges and their survivors and children, other than by way of grant of the Governor in Council. Under the current *Judges Act*, the Governor in Council grants annuities to judges who resign, retire or are removed from office. Under the amended Act, a judge is paid an annuity if he or she resigns or retires, while the Governor in Council continues to grant an annuity if the judge is removed from office or if the judge resigns where the Governor in Council is of the opinion that the resignation is conducive to the better administration of justice or is in the national interest.

The other amendments in Division 11 reflect the fact that an annuity may henceforth be either paid or granted.

2.7.12 Division 12: Amendments to the *Business Development Bank of Canada Act*

Current section 23(1) of the *Business Development Bank of Canada Act*[40] states that the authorized capital of the Business Development Bank of Canada consists of an unlimited number of common shares with a par value of $100 per share and an unlimited number of preferred shares without par value. That said, the paid-in capital of the bank, together with any contributed surplus relating to it and any proceeds referred to in section 30(2)(d) – proceeds of debt instruments, hybrid capital instruments or other arrangements – that have been prescribed as equity, must not exceed $3 billion at any time.

Clause 260 of the bill amends section 23(1) to increase the authorized capital of the Business Development Bank of Canada from $3 billion to $4.5 billion.

2.7.13 Division 13: Amendments to the *Financial Administration Act*

Clause 261 of the bill amends section 32(1) of the *Financial Administration Act*,[41] which deals with the control of commitments. It allows for a contract or other arrangement providing for payment only if one of the four balances below is sufficient to discharge any debt that will be due under the contract or other arrangement during the fiscal year in which the contract or other arrangement is entered into:

- an appropriation by Parliament to which the payment will be charged;
- an item included in estimates then before the House of Commons to which the payment will relate;
- a commitment limit in an appropriation Act to which the payment will relate; or
- revenues received or estimated revenues set out in estimates, in the case of a payment that will be charged to an authority, under an appropriation Act or any other Act of Parliament, to expend revenues.

NOTES

* This Legislative Summary was prepared by the following authors:

- Sam N. K. Banks — Section 2.7.7
- Andrew Barton — Section 2.7.6
- Brett Capstick — Sections 2.1.7, 2.1.8, 2.1.9 and 2.2.2
- Raphaëlle Deraspe — Section 2.7.13
- Sylvain Fleury — Sections 2.1.3, 2.3.1, 2.3.2 and 2.3.3
- Alexandre Gauthier — Sections 2.1.1 and 2.1.5
- Brian Hermon and Scott McTaggart — Section 2.7.3
- Alexandre Lavoie — Sections 2.1.11 and 2.2.3
- Marc LeBlanc — Section 2.1.2
- André Léonard — Sections 2.5 and 2.7.2
- Francis Lord — Sections 2.2.4, 2.2.5 and 2.1.8
- Robin MacKay — Section 2.7.11
- Lindsay McGlashan — Section 2.6
- Mayra Perez-Leclerc — Sections 2.7.8 and 2.7.9
- Simon Richards — Section 2.7.10
- Édison Roy-César — Sections 2.1.4, 2.2.1, 2.2.6, 2.4 and 2.7.12
- Alex Smith — Section 2.3.4
- Pascal Tremblay — Section 2.7.1
- Dominique Valiquet — “Background“
- Adriane Yong — Sections 2.1.6, 2.1.10, 2.2.7, 2.7.4 and 2.7.5

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3. Government of Canada, *Building a Strong Middle Class*, Budget 2017, 22 March 2017, p. 209.
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15. *Federal–Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.
16. *Bretton Woods and Related Agreements Act*, R.S.C. 1985, c. B-7.
17. The Special Drawing Right is an international monetary instrument created by the International Monetary Fund in 1969 to supplement its member countries' official reserves.
18. International Finance Corporation [IFC], *Our Governance*.
19. IFC, *IFC–Canada Climate Change Program*.
20. Department of Finance Canada, "3. Canadian Priorities: Addressing Climate Change," *Canada at the IMF and World Bank Group 2016–17*.
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23. *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3.
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25. *Payment Clearing and Settlement Act*, S.C. 1996, c. 6, Sch.
26. *Northern Pipeline Act*, R.S.C. 1985, c. N-26.
27. Northern Pipeline Agency, *Annual Report for Fiscal Year Ended March 31, 2016*, p. 3.
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30. Clause 214 of the bill provides that existing section 175(2) of the CLC continues to apply to the making of regulations for which the Minister of Labour has caused an inquiry to be made before the coming into force of clause 198.

31. Clause 204 of the bill makes consequential amendments to section 203(2)(b) of the CLC in order to add new Division I.1, which establishes flexible work arrangements. Existing section 203(2)(b) of the CLC gives the Governor in Council the power to make regulations to modify certain provisions under Part III (such as annual vacations, general holidays, and leaves of absence) so that these rights and benefits are also available for employees who work for more than one employer.

32. A consequential amendment is made in clause 211 of the bill to repeal section 247.9 of the CLC, which currently sets out the entitlement to postpone annual vacations for employees who take a leave of absence in order to participate in Reserve Force–related operations or activities. A second consequential amendment is made in clause 212 to remove the mention of section 247.9 from existing section 247.97(h) of the CLC, which grants the Governor in Council authority to make regulations specifying the circumstances in which various provisions related to the leave of absence for members of the Reserve Force do not apply.

33. Clauses 207(1), 207(2), 208, 209(1) and 209(2) of the bill make consequential amendments to sections 207.3(1), 207.3(2), 209.3(2), 209.4(a) and 209.4(g) of the CLC to expand the application of these general leave provisions in relation to the new leaves of absence. These provisions currently require employees to give notice of leave or of a change in the length of leave; prohibit employers from taking certain actions in respect of an employee who has taken a leave of absence; as well as authorize the Governor in Council to make certain regulations with respect to various leaves of absence.

34. Under existing section 209.4(h) of the CLC, the Governor in Council has powers similar to those conferred under new section 209.4(h.2), but with respect to the leave related to the death or disappearance of a child.

35. Clause 199, which enacts new section 177.1 of the CLC regarding flexible work arrangement requests, appears to be missing from the text of clause 215(2).

36. Consequential amendments are made in clause 218 of the bill in relation to sections 264(a.2) to 264(a.9) of the CLC in order to reflect the deletion of the criteria. These provisions enable the Governor in Council to make regulations prescribing specific requirements for internships.

37. *Energy Efficiency Act*, S.C. 1992, c. 36.

38. Under the definition provided in new section 20.1(1) of the *Energy Efficiency Act*, the term "requirement" refers to energy-efficiency standards, testing or information that must be provided by dealers that ship, for certain purposes, energy-using products from one province to another or that import such products into Canada.

39. *Judges Act*, R.S.C. 1985, c. J-1.

40. *Business Development Bank of Canada Act*, S.C. 1995, c. 28.

41. *Financial Administration Act*, R.S.C. 1985, c. F-11.