

May 17, 2023

Submission of the Insurance Bureau of Canada on Part 4, Division 33, of Bill C-47, An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023 to the Standing Senate Committee on Banking, Commerce and the Economy

On behalf of its member property and casualty (P&C) insurers, Insurance Bureau of Canada (IBC) would like to thank the Standing Senate Committee on Banking, Commerce and the Economy for the opportunity to comment on Bill C-47.

IBC is the national industry association representing Canada's private home, auto and business insurers. Our members represent the vast majority of the private P&C insurance market in Canada. For more than 50 years, IBC has worked with governments and insurance regulators across the country to help make affordable home, auto and business insurance available for all Canadians.

The P&C insurance industry plays an important role in underwriting economic and financial risks for Canadians and businesses. The insurance industry is an enabling sector that supports new ventures that contribute to the country's prosperity. The P&C insurance industry therefore welcomes the opportunity to provide comments on Bill C-47 with the goal of ensuring that Canadian financial institutions are well adequately prepared to protect themselves against threats to its integrity or security, including foreign interference.

Comments

The P&C Industry recognizes that trust in financial institutions is predicated on the knowledge that the integrity and security of these companies are appropriately shielded from foreign interference. To enable financial institutions to achieve this it is also important for regulations to be clear, consistent and balanced in order to create a predictable regulatory environment for businesses to operate effectively. In doing so, the federal government should also seek to avoid discouraging legitimate foreign investment opportunities.

Division 33: Legislation Related to Financial Institutions

1. Ministerial Order to Dispose Shares (Sections 580) – Amending the Insurance Companies Act by adding section 432.1 after section 432

Recommendation 1a: Clarity is required with respect to the application of the Ministerial Order to dispose shares to a foreign entity that is controlled by a Canadian company and IBC cautions against an onerous regulatory framework that may discourage legitimate foreign investment in Canada.

Recommendation 1b: Given the seriousness of a potential divestiture order under Section 432.1(3), IBC recommends a more robust mechanism for affected parties to make submissions with respect to the order.

Proposed section 432.1 would allow the Minister to 'order' a person or any person that is controlled by that person to dispose of "any number of shares held ... within the time specified ...". While we recognize this action requires a high standard, i.e., a risk that poses a threat to integrity and the security of the financial system in Canada or threat to national security, it is unclear how this order may be applied in practice when the person that holds the shares of

the company is a foreign entity. Further, based on the existing language, clarity is required to define the type of event and at what threshold could trigger such an order.

Additionally, more clarity is needed with respect to the how the disposition of shares should be achieved, with regard to who the shares must be disposed to and at what price. Consideration should also be given to communicating what interim steps could be taken by the shareholder to mitigate or eliminate the threat to integrity or security before such extreme action as share disposal is ordered by the Minister.

Section 432.1(3) provides that before the Minister can make an order calling for the disposition of shares, the shareholder and the company concerned is given a “reasonable opportunity to make representations”. However, section 432.1(4) would also give the Minister the right to make a temporary direction to suspend any of the rights under Part VI attached to any of the shares subject to the order. Given the seriousness of a divestiture order, the rights of the affected parties to make submissions appear inadequate from a procedural fairness perspective.

Finally, we note that the addition of sections 15.1, 574.1 and 657.1 would require companies to establish and adhere to policies and procedures to protect itself against threats to its integrity or security, including foreign interference. However, the Minister’s power to order divestiture of shares does not appear to require the Minister to make a determination that the company’s policies and procedures are no longer effective to fend off threats to a company’s integrity or security.

2. *Production of Information (Section 584) - Amending Section 671(1) of the Insurance Companies Act*

Recommendation: More clarity is required with respect to how this provision will apply in practice to a foreign entity that is controlled by or is affiliated with a Canadian company.

The proposed provision would broaden the ability of the Office of the Superintendent of Financial Institutions (OSFI) to issue an order requesting information or documentation from “a person who controls a company or any entity that is affiliated with a company” which would include a beneficial owner.

Conclusion

IBC would like to thank the Standing Senate Committee on Banking, Commerce and the Economy for this opportunity to present its views on Bill C-47. We welcome this and future opportunities to work with the Committee to ensure that Canadian businesses protect themselves against the dangers of foreign interference to their integrity and security while maintaining a balanced regulatory environment that does not discourage legitimate foreign investments in Canadian businesses.