

Your committee, which was authorized to examine the subject matter of those elements contained in Divisions 3, 8, 18 and 20 of Part 4 of Bill C-44, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures, has – pursuant to the motion adopted by the Senate on May 8, 2017 – examined the said subject matter and now reports as follows.

The committee held meetings on 17, 18, 30 and 31 May 2017, and 1 June 2017, during which it heard from the Minister of Finance, 15 officials from five federal departments and agencies, and representatives from think tanks, pension plans and the economic development, business, academic and financial services sectors.

### **DIVISION 3 – PROPOSED AMENDMENTS TO THE CANADA DEPOSIT INSURANCE CORPORATION ACT AND THE BANK ACT**

Division 3 would make technical amendments to Canada's bail-in regime for domestic systemically important banks. In particular, it would amend the *Canada Deposit Insurance Corporation Act* to give the Canada Deposit Insurance Corporation (CDIC) the legislative authority to act as the resolution authority in the event that one of its member institutions fails; this ability would exist in addition to the CDIC's current role in providing deposit insurance. As well, Division 3 would require domestic systemically important banks to develop and maintain a resolution plan if requested to do so by the CDIC, and would allow the CDIC's board of directors to make by-laws in relation to those plans.

Moreover, in relation to a domestic systemically important bank's minimum capacity to absorb losses during a resolution, Division 3 would amend the *Bank Act* to allow the Office of the Superintendent of Financial Institutions (OSFI) to consider any criteria that it wishes regarding a bank's capital, shares and liabilities when assessing such a bank's minimum capacity.

The Department of Finance stated that, following the 2008 financial crisis and consistent with international standards, the CDIC was given powers and tools to enable it to facilitate the orderly resolution of a failed member institution. It clarified that the proposed amendments would formally designate the CDIC as the resolution authority for its member institutions, and would give it the power to require domestic systemically important banks to develop a resolution plan that would describe the manner in which such a bank would resolve its failure while simultaneously ensuring the continuity of critical financial services and the stability of Canada's financial system. As well, the Department explained that Division 3 would allow the CDIC to establish a by-law setting out a framework for resolution plans. It noted that, since 2015, Canada's domestic systemically important banks have been working voluntarily with the CDIC to prepare resolution plans. The CDIC mentioned that it is currently reviewing the first drafts of these plans.

Regarding the federal bail-in regime for domestic systemically important banks that was introduced in 2016, the Department of Finance noted that there could be some confusion about OSFI's power to establish criteria about the manner in which these banks would be able to satisfy their minimum capacity to absorb losses during a resolution. It stated that the proposed amendments would clarify that OSFI could establish criteria regarding the manner in which such a bank could meet this minimum capacity requirement; this capacity would be used to recapitalize the bank in the event of its failure. Both the Department and the CDIC emphasized that CDIC-insured deposits are not within the scope of Canada's bail-in regime.

The CDIC identified a number of tools that it can use to deal with a failing financial institution; these tools include liquidation and the reimbursement of deposits, the creation of a bridge bank, and CDIC control of a failed financial institution. It explained that it has been operating as the resolution authority for failed member institutions for several years, and that the proposed changes would provide a legal basis for its ability to act as this authority and expanded powers in relation to that role.

Regarding international standards for the regulation of financial institutions, the Department of Finance said that the Financial Stability Board and the G20 have been working to ensure that banks that were previously considered too big to fail would no longer need to be bailed out in the event of possible failure. It noted that, in 2011, the Financial Stability Board issued international standards – referred to as *Key Attributes for Effective Resolution Regimes for Financial Institutions* – for global and for domestic systemically important financial institutions; since then, jurisdictions have been implementing the applicable international standard. It suggested that Canada is close to full implementation of all of the requirements of international standards with respect to its bail-in regime for domestic systemically important banks, and that OSFI is requiring such banks to meet some of the global standards, which are more stringent than domestic standards. As well, it noted that a number of international financial regulatory reforms are occurring simultaneously, including in relation to international financial reporting standards, and that these reforms have impacts on the banks.

Regarding the role played by the Bank of Canada when a domestic bank fails, the Department of Finance and the CDIC indicated that the Bank of Canada is responsible for emergency lending assistance, and would be involved in any decision regarding the appropriate resolution tool for a failed bank because the Bank of Canada is a member of Canada's Financial Institutions Supervisory Committee and the CDIC's board of directors.

The Canadian Bankers Association highlighted its support for the changes proposed in Division 3, and commented that they would further strengthen Canada's bank resolution regime, including its bail-in regime. It noted that the 2008 financial crisis demonstrated that the importance of banks having a resolution plan in place to unwind their operations with minimal disruption to Canada's overall financial system, and stated that it does not have concerns with codifying the CDIC's role as the resolution authority for its member institutions. Regarding Canada's bail-in regime, it said that it is working closely with the federal government on the development of draft regulations and guidelines.

In relation to the failure of banks that operate internationally and the manner in which a failure in the United States could affect Canada, the Canadian Bankers Association said that regulators around the world have decided to manage "cross-border contagion risk" by having parent financial institutions calculate the "solo" or stand-alone capital in each of their international subsidiaries and affiliates. Furthermore, it explained that a parent financial institution would have to determine if it could access its subsidiaries' and affiliates' solo capital at times of financial stress or if it would have sufficient domestic reserves to continue its operations independently. It mentioned that a parent financial institution may be required to file resolution plans in multiple jurisdictions; these plans would need to address its consolidated worldwide operations and its individual operations in order to ensure that each operation could survive a financial crisis independently. It highlighted that regulators in various countries, as well as those operating within a jurisdiction, should communicate with each other when there is a shared concern about a particular financial institution.

Finally, the Canadian Bankers Association said that international financial reporting standards could have an impact on the manner in which a bank's financial reports are organized, but that they will not affect a financial institution's prudential decisions or its choices about obtaining and holding high-quality capital.

## **DIVISION 8 – PROPOSED AMENDMENTS TO THE *INVESTMENT CANADA ACT***

The 2013 federal budget announced a gradual increase, from \$600 million as of 25 April 2015 to \$1 billion in 2019, in the threshold amount for a net benefit review of a transaction to acquire control of a Canadian business by private investors from World Trade Organization member countries. Division 8 would accelerate the transition to the \$1 billion threshold. In particular, this threshold amount would exist as of the date on which Bill C-44 receives Royal Assent; for the following years, the threshold amount would be indexed based on the growth rate of Canada's nominal gross domestic product. As well, Division 8 would require the annual report prepared by Innovation, Science and Economic Development Canada's Director of Investments to include investments that were subject to national security reviews.

Innovation, Science and Economic Development Canada noted that the amendments proposed in Division 8 would not affect the threshold amount for net benefit reviews for investments by state-owned enterprises, and nor would they affect the federal government's authority to conduct national security reviews of investments. It mentioned that the 2013 schedule of increases in the threshold amount responded to recommendations made by the Competition Policy Review Panel that were designed to make Canada more globally competitive, and that the proposal to accelerate the increase in the threshold amount would support other federal initiatives aimed at attracting foreign investment. Regarding the indexation of the threshold amount, it said that the result would be only a slight annual increase.

With respect to Canada's competitors for foreign investment, Innovation, Science and Economic Development Canada highlighted that the requirement for a net benefit review might be putting Canada at a disadvantage because most of the country's competitors do not require an economic – or net benefit – review of foreign investments, but rather only a national security review. It explained that, for investments below the threshold amount for a net benefit review, investors are required to file a notice with the federal government so that their proposed investment can be reviewed for national security concerns. Lastly, it clarified that an investment of \$1 billion requires a change in the operating control of the Canadian business in order for the investment to be subject to a net benefit review.

The Business Council of Canada indicated its support for the proposed acceleration in the transition to the \$1 billion threshold for a net benefit review, believing that – except in unique circumstances – foreign investment is beneficial to Canada. Similarly, the Canadian Chamber of Commerce supported the proposed acceleration, and pointed out that the net benefit review process is complex, creates the perception that Canada's regulatory and political environment discourages foreign investment, and is a significant regulatory burden for foreign investors. As well, it noted that Canada and Australia alone among developed Organisation for Economic Co-operation and Development countries have formal processes for investment review and approval.

## **DIVISION 18 – ENACTMENT OF THE CANADA INFRASTRUCTURE BANK ACT**

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### **A. Background**

Division 18 would enact the Canada Infrastructure Bank Act, which would establish the Canada Infrastructure Bank (the proposed bank) as a federal Crown corporation; as well, the statute would set out the proposed bank's purpose, functions and powers, the manner in which it would be funded, and its governance and accountability frameworks. The proposed bank's headquarters would be in Canada at a place designated by the Governor in Council. On 8 May 2017, the federal government announced its intention to locate the proposed bank's headquarters in Toronto.

The proposed bank's mission would be to invest in, and attract private-sector and institutional investors to, revenue-generating infrastructure projects that are in the public interest, and that are located in Canada or partly in Canada. In particular, the proposed bank would be authorized to:

- invest in a company or make a loan;
- extend credit or provide liquidity to any person;
- acquire, hold, surrender or realize securities and security interests;
- enter into agreements with federal or provincial departments or agencies for the provision of services or programs.

In addition, with the approval of its designated minister and the Minister of Finance, the proposed bank could provide loan guarantees. As well, it would have the power to collect and disseminate data on the state of Canada's infrastructure and to provide advice to all orders of government on infrastructure projects.

The proposed bank would be directed by a board of directors composed of a chairperson who would be appointed by the Governor in Council for a term deemed appropriate, and eight to eleven directors who would be appointed by the Governor in Council for renewable four-year terms. The proposed bank's chief executive officer would be appointed by the board subject to approval by the Governor in Council, with the exception of the first chief executive officer; this person would be appointed by the Governor in Council. Every year, the proposed bank would have to submit a corporate plan, operating budget and capital budget for approval by the Governor in Council.

The proposed statute would authorize the Minister of Finance to pay up to \$35 billion to the proposed bank, and to make loans to it from the Consolidated Revenue Fund. As well, on the recommendation of the proposed bank and its designated minister, the Minister of Finance would be authorized to make loans or provide loan guarantees for infrastructure projects in which the proposed bank is involved.

The proposed bank would be subject to the reporting requirements incumbent on parent Crown corporations by Part X of the *Financial Administration Act*. In addition, the Auditor General of Canada and an auditor appointed annually by the Governor in Council would be responsible for auditing the proposed bank's financial statements and accounting information. The proposed bank would also be subject to the provisions of the *Access to Information Act*, but – except as stipulated in the proposed statute – it would not be allowed to disclose the information gathered about developers of infrastructure projects, private-sector investors or institutional investors.

Every five years, the proposed bank's designated minister would be required to review the provisions and operation of the proposed statute, and to report on the review to each House of Parliament. The report would then be reviewed by a committee of the Senate or of the House of Commons, or by a joint committee.

## **B. General**

The Minister of Finance stated that Canada's infrastructure deficit is an estimated \$570 billion, and that no level of government has sufficient resources to address this deficit; however, private-sector investors, such as pension funds and institutional investors, are looking for long-term and stable investment opportunities in Canada. He explained that the proposed bank would attract private-sector capital for revenue-generating infrastructure projects that would not otherwise be built, and would allow governments to focus their spending on other priorities. He added that the transformative projects that would be supported by the proposed bank would normally not be feasible because of their high cost, risk profile or limited revenue potential. As well, he mentioned regional transit plans, transportation networks and electricity grid interconnections as examples of large transformative projects that the proposed bank could support.

Infrastructure Canada indicated that, for the most part, federal support for infrastructure would continue to be delivered using existing approaches, and that projects supported by the proposed bank would represent approximately 10% of total federal support under the Investing in Canada plan. According to it, the federal government's objective is for the proposed bank to be operational in late 2017.

As well, Infrastructure Canada explained that most of the projects that would be supported by the proposed bank would be submitted by the other levels of government; they would provide information about the project, including its terms, the revenue model that would be used and the potential amount of revenue. The proposed bank would then seek potential private-sector investors that are interested in that project; the proposed bank would provide some type of financial support in order to attract these investors. Moreover, the proposed bank would work on a partnership agreement among the project's public-sector sponsor, its private-sector investors and itself; the parties to the partnership agreement would consider options in relation to procurement, design, construction and operation of the project.

Infrastructure Canada also indicated that parties other than governments could submit proposals for projects to the proposed bank; however, these proposals would be a minority of the proposals that are submitted, and a public-sector sponsor would still be required. Jack Mintz, who appeared as an individual, stated that an ability for investors to submit proposals to the proposed bank could lead to a better selection of projects.

Mr. Mintz told the committee he had a number of significant concerns about the proposed bank and that it is unclear whether it would accomplish something that cannot be achieved by a public-private partnership (PPP) Crown agency or regulated private corporations. He said that the concept of an infrastructure bank that combines public- and private-sector funding has been proposed in many countries, such as Australia and the United States, but that it has not been widely supported, partly because its advantages are not obvious. He added that the governance of the proposed bank could be problematic because of the difficulties encountered when attempting to merge public- and private-sector interests; private-sector investors typically want to generate a return on their investment, while governments may have objectives that could reduce the profitability of projects.

Because the purpose of the proposed bank would be to attract private-sector investors to participate in revenue-generating infrastructure projects, Mr. Mintz commented that the result could be greater use of user-pricing in relation to infrastructure. In his view, user-pricing is desirable for identifying demand for particular infrastructure but can lead to high prices for users because most infrastructure projects are quasi-monopolies.

Mr. Mintz indicated that one potential advantage of the proposed bank would be the ability to use the retained earnings that would be generated to support other infrastructure projects. According to him, this ability would allow the proposed bank to distinguish itself from other ways in which infrastructure is delivered, such as public infrastructure spending and through a PPP Crown agency.

The Ontario Teachers' Pension Plan Board expressed its support for the proposed bank, but mentioned that its success would depend on the manner in which it is implemented and operates. It said that the proposed bank should accelerate the development of critical infrastructure by identifying priorities and attracting private-sector investors, and should be overseen by an independent and highly qualified board of directors and management team.

The Canadian Council for Public-Private Partnerships described the proposed bank as the next step in the evolution of PPPs in Canada. It suggested that, if the proposed bank is structured properly, public spending on infrastructure projects could be reduced by transferring the risks relating to revenue generation while ensuring that projects are both well-maintained, and delivered on time and on budget. According to it, the term "structured properly" means that each proposal for a project that is submitted to the proposed bank should have a strong business case, and procurement should occur in a competitive, efficient, transparent and fair manner.

As well, the Canadian Council for Public-Private Partnerships explained that it has been very difficult for Canada's governments to develop revenue-generating infrastructure projects, and that only three of the country's 258 PPP projects are revenue-generating. According to it, this difficulty is the result of the high risk and/or unpredictability associated with revenue-generating projects; it noted, for example, that it can be challenging to estimate traffic levels for the purposes of a proposed highway project. BMO Capital Markets said that, in the case of a proposed highway, the federal government could potentially underwrite this "start-up risk in the traffic" – which cannot be done by the private sector – and thus allow the project to be financed. The Canadian Council for Public-Private Partnerships suggested that the proposed bank might enable more revenue-generating projects to be done. It also stated that the proposed bank should not become involved in projects of the types that are currently being done by governments or traditional PPPs.

According to BMO Capital Markets, the proposed bank is an opportunity to bring stakeholders together with a view to expanding and improving the manner in which Canada's infrastructure is financed. It indicated that one potential benefit of the proposed bank would be its role as an avenue through which individuals with the appropriate background could be accessed. Similarly, the Canadian Chamber of Commerce stated that the proposed bank could bring stakeholders together and allow PPP projects to move forward quickly.

The Canadian Chamber of Commerce was cautiously optimistic about the proposed bank, but noted that it is difficult to predict the manner in which the proposed bank would operate and the types of projects that would be supported.

The Business Council of Canada expressed support for the establishment of the proposed bank, and stated that its design should allow, through open and competitive bidding, the realization of projects that would not otherwise be pursued by governments.

Matti Siemiatycki, who appeared as an individual, suggested that the proposed bank's approach to supporting infrastructure creates an opportunity to increase the amount of funds available for infrastructure investments. He said that most of Canada's infrastructure assets are not supported by their revenue streams, with the result that the scope of projects that the proposed bank could support is narrow. In his view, the proposed bank could support revenue-generating projects that are innovative, such as real estate development that occurs on top of transit hubs transit hubs and green energy retrofits.

According to Mr. Siemiatycki, the following issues should be considered in relation to the proposed bank: the manner in which the public interest would be protected; the cost of private capital, which is typically higher than that of public capital; the need for governments to maintain some control over assets that would be privately owned and operated; and the manner in which projects would be prioritized.

In its written submission, the National Union of Public and General Employees expressed concern about the potential loss of democratic control over public services that would be financed through the proposed bank, the cost of infrastructure increasing due to private investment, and the quality of public services declining because of the priority that would be given to maximizing revenue for private investors. It asked that Division 18 be removed from Bill C-44, and amended to meet the federal government's original objective of providing low-cost financing for infrastructure. The Public Service Alliance of Canada shared a similar view, suggesting that infrastructure financing through the proposed bank could lead to higher costs for infrastructure projects and private-sector control of public projects.

In addition to the issues identified by the National Union of Public and General Employees and the Public Service Alliance of Canada, the Canadian Union of Public Employees – in its written submission – suggested that the proposed bank's primary purpose should be to provide low-cost financing for municipal infrastructure projects that are of public interest. As well, in its view, the proposed requirement that projects should generate revenue should be removed, the proposed bank should be capitalized with public funds only, the priorities for public infrastructure should not be identified by the private sector, a long-term infrastructure plan should be developed before introducing new infrastructure financing initiatives, and an independent infrastructure data initiative should be developed and located within either Infrastructure Canada or Statistics Canada.

### **C. Functions and Powers**

Infrastructure Canada stated that the proposed bank would have a wide variety of financial tools with which it could make investments in infrastructure projects, including debt and equity investments. It added that the proposed bank, a project's public-sector sponsor and its private-sector partners would co-invest in a given project.

The Ontario Teachers' Pension Plan Board stated that the proposed bank should provide "bridging capital," which it described as capital that would attract private-sector capital that would not otherwise be available, and that would earn a lower return than private-sector capital. It said that bridging capital is essentially a subsidy and could take various forms, such as equity with a first-loss provision, a loan

guarantee or a minimum traffic guarantee in the case of a transportation infrastructure project. It explained that a government should provide bridging capital not to earn an investment return, but rather to enable the construction of more infrastructure, which would benefit society as a whole.

According to Mr. Mintz, the use of loan guarantees by the proposed bank could lead to a misallocation of the risks associated with a project. In his view, taxpayers would be responsible for downside risks and, if the project's performance exceeds expectations, taxpayers would share the resulting benefits with the private-sector investors.

According to the Canadian Chamber of Commerce and Mr. Siemiatycki, the largest potential benefits of the proposed bank could be its ability to collect and disseminate information, and to provide advice on the state of infrastructure in Canada. The Canadian Chamber of Commerce noted that the proposed bank's data and analysis function could address the federal government's lack of capacity in terms of infrastructure policy and could help governments to identify Canada's long-term challenges in relation to infrastructure. Mr. Siemiatycki said that this role for the proposed bank could involve evidence-based project selection, and the creation of both national standards for data collection on project performance and a national training academy for staff involved in project delivery. The Minister of Finance indicated that one objective of the proposed bank is the development of expertise in relation to contracting for long-term projects.

The Canadian Council for Public-Private Partnerships said that not all governments have the capacity to procure large-scale, complex, revenue-generating infrastructure projects successfully, and that the federal government should create a "project preparation fund" to allow governments to obtain the expertise that they need to undertake such projects.

The C.D. Howe Institute indicated that, in order to manage and compare the large number of proposals for projects that the proposed bank would likely receive, the federal government should create a standardized template, as well as consistent measures of project benefits and risks. It also suggested that the federal government should require data collection in relation to projects that receive federal funding that exceeds a certain threshold.

Patrick Taillon, who appeared as an individual, stated that paragraph 5(4)(d) of the proposed statute would give the federal government the power to specify, by order on a project-by-project basis, whether the proposed bank is an agent of the Crown. According to him, if the proposed bank has the status of an agent of the Crown, it would benefit from the immunities and privileges associated with that status, which could lead to situations in which projects supported by the proposed bank would not be subject to provincial laws and municipal regulations.

Mr. Taillon explained that agent of the Crown status is normally conferred through legislation or court decisions, and that Division 18's proposed delegation of this power to the federal government is likely unprecedented. He proposed that paragraph 5(4)(d) be removed from the proposed legislation so that Parliament would maintain its power to decide the situations in which the proposed bank would be an agent of the Crown. Alternatively, in order to limit the immunities conferred by agent of the Crown status, he said that the proposed legislation could specify that provincial laws would apply to projects supported by the proposed bank.



The Minister of Finance indicated that there would not be a special exemption in relation to the application of federal and other governments' laws for the proposed bank or for any of the projects in which it invests.

On 6 June 2017, the committee received a letter from Infrastructure Canada and the Department of Finance addressing Mr. Taillon's comments about the potential effect of subsection 5(4) of the proposed Canada Infrastructure Bank Act. The letter can be found in Appendix A.

#### **D. Governance**

The Minister of Finance stated that, while the proposed bank would be independent, it would be accountable to the federal government and to Parliament. According to him, the proposed governance framework strikes the correct balance between government oversight and the need for adequate expertise in decisions about infrastructure investments. He also said that the federal government would be responsible for establishing the proposed bank's overall strategy and high-level investment priorities. Infrastructure Canada commented that, because the proposed bank's purpose is to allow more infrastructure to be built in the public interest, complete independence from the federal government might not be the best approach.

As well, the Minister of Finance identified the federal government's intention to retain responsibility for appointing and removing board members, and to adopt a transparent and rigorous approach in doing so. Infrastructure Canada said that, on 8 May 2017, the government launched an open and transparent merit-based selection process on an anticipatory basis to select a chairperson, directors and the chief executive officer. It also indicated that the provinces have been asked to suggest qualified candidates, and that any appointment would be effective only if Division 18 receives Royal Assent. The Canadian Council for Public-Private Partnerships stressed that, in order to turn the proposed concept into reality, it is important to select the proposed bank's leadership in a timely manner.

The Ontario Teachers' Pension Plan Board characterized the independence and qualifications of the proposed bank's board of directors and management team as absolutely critical to the proposed bank's success. According to it, the proposed bank would not be able to attract highly qualified directors and managers without sufficient independence from the federal government. It also said that consideration should be given to ensuring board diversity in terms of gender, regional representation, skills and background.

As well, the Ontario Teachers' Pension Plan Board recognized that, because the federal government would create and fund the proposed bank, it should be able to provide directions to it regarding the manner in which its capital should be invested. However, it noted that the federal government should provide only broad policy objectives, such as easing congestion in urban areas or creating trade corridors, and should permit the proposed bank's board of directors and management team to select the projects that would best fulfil these objectives; the board and managers should also oversee the details of these projects, including the manner in which they would be financed and procured.

The Ontario Teachers' Pension Plan Board's main concern with the proposed governance framework is the possibility that final Cabinet approval would be required for individual investments. It explained that it may be very difficult to recruit a highly qualified chief executive officer if Cabinet is the final decision maker; in its view, in this case, it is unlikely that the chief executive officer would have the confidence of

potential private-sector partners. It indicated that, early in the process and before negotiations begin, it would be acceptable for Cabinet to examine and approve projects in which the proposed bank has an interest. Similarly, the C.D. Howe Institute mentioned that any use of public funds by the proposed bank should require ministerial or Cabinet approval, with this approval occurring at the beginning of the process; further ministerial approval should not be required for completing a transaction.

Moreover, the Ontario Teachers' Pension Plan Board identified a number of potential improvements to the proposed bank's governance framework. It supported the establishment of a governance committee as part of the board of directors, and of more detailed requirements in relation to the background, professionalism and experience of board members. It also said that the federal government should not be able to remove board members before the end of their term without cause, and that decisions regarding the selection, compensation and termination of the chief executive officer should be made by the board. Similarly, the C.D. Howe Institute thought that board members should only be terminated for cause.

The Ontario Teachers' Pension Plan Board said that the governance framework of the Canada Pension Plan Investment Board could be used as an example for the framework of the proposed bank. In contrast, the C.D. Howe Institute suggested that, given the political nature of the proposed bank's activities, it should not be as independent as the Canada Pension Plan Investment Board.

According to the Canadian Chamber of Commerce, the proposed bank's success in attracting private-sector investors relies on the perception of a lack of political interference. It indicated that its main concern is that loan guarantees would require ministerial approval. However, it also said that political influence can be positive if it allows projects of strategic importance to Canada to go forward; ultimately, the proposed bank's purpose is to create more infrastructure, which is a political objective.

The Business Council of Canada supported independence for the proposed bank in terms of its ability to analyze, select and structure projects without political interference, and stated that the proposed power for the Minister of Finance to approve loan guarantees is reasonable because of the federal government's need to be accountable for the use of public funds. It indicated its satisfaction with the proposed governance framework, but noted that it would only be possible to determine the extent to which the proposed bank is operating without political interference after it has been established.

According to the C.D. Howe Institute, the proposed bank should have a single objective in its mandate that defines the projects that should be supported. As well, it believed that the proposed bank's independence should be enshrined in legislation in order both to protect it from political interference and to allow it to be perceived as credible, rigorous and committed to evidence-based decision making. It highlighted Australia's experience with Infrastructure Australia, explaining that Infrastructure Australia's board had limited independence from Australia's federal government when Infrastructure Australia was established, which discouraged participation by the other levels of government; however, Australia's federal government changed Infrastructure Australia's enabling legislation to ensure that board members can only be replaced for cause and to allow board appointments to be made on the advice of the other levels of government.

In addition, the C.D. Howe Institute stated that more detailed provisions regarding the proposed bank's governance framework, including its interactions with the federal government, should be added to Division 18.

In the view of Mr. Siemiatycki, in order to achieve the highest level of transparency, democratic credibility and independence, the designated minister should set priorities regarding proposed projects, with the proposed bank then conducting – and making public – an evidence-based evaluation; a final decision would then be made about whether the project moves forward. He described the proposed governance framework as adequate, although he expressed concerns about the Governor in Council's ability to terminate individual board members.

Mr. Mintz stated that government policies and/or political interference could lower returns on pension funds' investments in infrastructure projects that would be supported by the proposed bank. He also suggested that there is a risk that governments could interfere in the decision-making process of public pension plans through the proposed bank.

Regarding ministerial approval of loans or loan guarantees, the Minister of Finance said that the federal government wants to maintain responsibility for investing public funds in infrastructure because it – not the infrastructure experts employed by the proposed bank – would be accountable to Canadians. He added that the federal government's intention is to approve projects as early as possible in the proposed bank's process in order to give certainty to investors. Infrastructure Canada indicated that ministerial approval of loan guarantees would be consistent with the requirements that generally exist for Crown corporations.

Having heard the contrasting views expressed by witnesses in relation to Division 18's governance framework for the proposed bank, the committee is not convinced that the right balance between the need for the proposed bank's decision making to be free from political interference and the need for the federal government to maintain adequate oversight of the use of public funds has been achieved. The committee believes that the federal government should ensure that the proposed governance framework attracts highly qualified board members and senior managers, as well as private-sector investors. As well, the federal government should ensure that the proposed bank's investment decisions are made by the bank's senior management, and not private-sector investors.

## **E. Accountability**

The Minister of Finance indicated that the Auditor General of Canada would be able to review any project in which the proposed bank would invest, as well as any subsidiary that it would create or own.

The written submissions by the National Union of Public and General Employees, the Public Service Alliance of Canada, the Canadian Union of Public Employees and Ken Rubin, who made a submission as an individual, called for amendments to improve the transparency and accountability of the proposed bank. In particular, they mentioned that – as Division 18 is currently drafted – most of the details of infrastructure projects would likely be considered privileged information and kept secret, and whistleblowers could be subject to fines and/or imprisonment.

## **F. Funding**

Infrastructure Canada stated that the proposed bank's assets, liabilities, revenues and expenses would be included in the federal government's financial statements. It also explained that an amount of \$35 billion would be transferred to the proposed bank over an 11-year period, as required, to execute transactions; of this amount, the proposed bank would be authorized to spend, on an accrual basis, up to \$15 billion. The Minister of Finance described the \$15 billion amount as "concessional capital," and

indicated that the remaining amount of \$20 billion would be capital that the proposed bank would invest in projects; it would not be considered as an expense.

## **DIVISION 20 – ENACTMENT OF THE INVEST IN CANADA ACT**

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Division 20 would enact the Invest in Canada Act, which would create a federal departmental corporation called the Invest in Canada Hub (the Hub). According to Global Affairs Canada, the Hub would work with federal departments, as well as with provincial and municipal investment attraction offices, with a view to increasing foreign direct investment in Canada. It explained that the proposed statute would establish the Hub as a federal departmental corporation, describe the proposed Hub's mandate and functions, outline the governance structure of the proposed Hub, and identify the roles of the designated minister, the board of directors and the chief executive officer in the management of the proposed Hub. It also mentioned that the proposed Hub would receive \$218 million in federal funding over five years.

In speaking about the need for the proposed Hub in light of the trade commissioners who already work within Canada's embassies and consulates to promote Canada to foreign investors, Global Affairs Canada clarified that the proposed Hub's employees would work with the trade commissioners; although they would be located in Canada, they would occasionally travel outside of Canada to meet with investors. Furthermore, it pointed out that the proposed Hub's primary purpose would be to simplify the process for making investments in Canada; it would act as the "single window" for investors who need information at the federal level, such as in relation to immigration, taxes or incentive programs. It mentioned that the proposed Hub would not be focused on attracting capital, but instead would target "greenfield" investments, which could involve a foreign company opening a plant or office in Canada.

Recognizing that the establishment of the proposed Hub would involve costs to establish this new agency, including appointments of both a board of directors and a chief executive officer, Global Affairs Canada said that the proposed Hub would be a federal departmental corporation in order to ensure its visibility; it would not be "hidden" within a department. It further explained that, as a federal departmental corporation rather than a Crown corporation, the proposed Hub would not be at arm's-length from the government; thus, it could receive direction from a federal minister regarding the government's foreign investment priorities. It stated that the role of the proposed Hub's board of directors would be to ensure that funds are properly spent and that policies with respect to the funds are developed, and to contribute contacts and knowledge about foreign investment.

In relation to the exemption of the proposed Hub from certain regulations established by the Treasury Board pursuant to the *Financial Administration Act*, Global Affairs Canada indicated that the proposed exemptions would provide the proposed Hub with flexibility to recruit specialized personnel from the private sector, including individuals with expertise in sales or the ability to attract foreign investment. It identified the Canada Revenue Agency, the National Research Council of Canada and the Canadian Food Inspection Agency as examples of federal departmental corporations, and highlighted that the statute that established the Canada Revenue Agency is similar to that for the proposed Hub.

Consider Canada City Alliance expressed its full support for the proposed Hub, believing that it would become the single access point for municipalities to the federal government regarding the attraction of foreign investment. It speculated that the proposed Hub could help to coordinate trade missions, and could answer questions about immigration, federal incentive programs, federal economic development

strategies, marketing of the “Canada brand,” the generation of investment opportunities, strategies for investment promotion, data collection in relation to investment promotion, and federal funding for investment promotion agencies. It suggested that, if the proposed Hub were to have offices throughout Canada, its employees could be co-located with representatives from the Consider Canada City Alliance. It noted that it is actively working with the federal government to assist with the implementation of the proposed Hub.

Regarding the need for the proposed Hub, Consider Canada City Alliance said that Canada is not as aggressive as it should be in attracting foreign investment. Furthermore, it noted that it currently has a good working relationship with the trade commissioner service, but that Canada’s trade commissioners are very busy; additional personnel are required, particularly to “champion” foreign investment at the municipal and regional levels. It highlighted the importance of the proposed Hub’s employees having a business background and private-sector experience in order to understand the manner in which potential investments should be “positioned.”

According to the Canadian Chamber of Commerce, its members support the establishment of the proposed Hub rather than the creation of more tasks for Canada’s trade commissioners. In particular, it mentioned a specialized “concierge” in Canada who would excel at decision-making, and who would be knowledgeable about the best entities within the federal, provincial and municipal governments to support a potential investor.

AdvantageBC expressed its support for the proposed Hub, and said that it should be decentralized and should not duplicate services already being provided by non-governmental organizations that promote foreign investment in Canada. While it agreed that Canada’s trade commissioners assist foreign investors, it pointed out that these individuals have limited budgets with which to market Canada abroad. It said that the proposed Hub would likely employ entrepreneurial individuals who would have business experience, would be able to anticipate the needs of investors, and would fill a gap by being a Canadian contact in coordinating meetings with relevant municipal, provincial and non-governmental organizations.

After considering the witnesses’ testimony with respect to Division 20, the Committee remains uncertain about the need to establish a new agency to promote foreign investment in Canada. In the Committee’s view, the federal government should provide further clarification about the role of the proposed Hub in enhancing foreign direct investment in Canada.