

# CONSOLIDATION OF RISK CAPITAL INVESTMENT TAX CREDITS ACT

S.N.W.T. 1998,c.22

In force September 25, 1998 : SI-002-99

(Current to: April 3, 2015)

## AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1999,c.11

In force September 25, 1998 (deemed)

## AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2011,c.10,s.31

s.31 in force March 10, 2011

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

**TABLE OF CONTENTS****PART I****INTERPRETATION**

Definitions	1
Shares of qualifying trust deemed to be those of individual	2
Related persons	3
Controlled corporations	4
Paramountcy	5
Repealed	6

**PART II****LABOUR SPONSORED VENTURE CAPITAL  
CORPORATIONS**

Definitions	7
Application for registration	8 (1)
Conditions for registration	(2)
Certificate of registration	(3)
Approval to raise equity capital	(4)
Exemption from <i>Securities Act</i>	9
Criteria for eligibility for registration	10
Contents of labour sponsored venture capital plan	11 (1)
Ability to alter labour sponsored venture capital plan	(2)
Place of business	12
Limits on equity capital	13 (1)
Exemption	(2)
Minimum investment requirements	14
Form of assets	15
Amount of guarantee included in calculating investment	16
Prohibited investments	17
Control of eligible business	18
Related party investments prohibited	19 (1)
<i>Idem</i>	(2)
<i>Idem</i>	(3)
Limit on investment by labour sponsored venture capital corporation	20 (1)
Limit on investment by corporation registered under this Act	(2)
Exemption	(3)
Application for tax credit certificate	21 (1)
Where application may not be made	(2)
Amount of tax credit an individual may claim	(3)

Amount of tax credit a person, other than an individual, may claim		(4)
Tax credit certificate		(5)
Conditions for issuance of tax credit certificate		(6)
Form of application		(7)
Agent		(8)
Restrictions on ability to claim tax credit	22	

## PART III

## EMPLOYEE VENTURE CAPITAL CORPORATIONS

Definitions	23	
Application for registration	24	(1)
Conditions for registration		(2)
Certificate of registration		(3)
Approval to raise equity capital		(4)
Criteria for eligibility for registration	25	
Contents of employee venture capital plan	26	(1)
Ability to alter employee venture capital plan		(2)
Place of business	27	
Limits on equity capital	28	(1)
Exemption		(2)
Minimum investment requirements	29	
Form of assets	30	
Amount of guarantee included in calculating investments	31	
Prohibited investments	32	
Control of eligible business	33	
Related party investments prohibited	34	(1)
<i>Idem</i>		(2)
<i>Idem</i>		(3)
Limit on investment by employee venture capital corporation	35	(1)
Limit on investment by corporation registered under this Act		(2)
Exemption		(3)
Tax credit	36	(1)
Where application may not be made		(2)
Amount of tax credit		(3)
Tax credit certificate		(4)
Conditions for issuance of tax credit certificate		(5)
Form of application		(6)
Agent		(7)
Restrictions on ability to claim tax credit	37	

## PART IV

COMMUNITY ENDORSED VENTURE CAPITAL  
CORPORATIONS

Definitions	38	
Application for registration	39	(1)
Sponsor of community endorsed venture capital corporation		(2)
Conditions for registration		(3)
Certificate of registration		(4)
Approval to raise equity capital		(5)
Exemption from <i>Securities Act</i>	40	
Criteria for eligibility for registration	41	
Contents of community endorsed venture capital plan	42	(1)
Ability to alter community endorsed venture capital plan		(2)
Place of business	43	
Limits on equity capital	44	(1)
Exemption		(2)
Minimum investment requirements	45	
Form of assets	46	
Amount of guarantee included in calculating investments	47	
Prohibited investments	48	
Control of eligible business	49	
Related party investments prohibited	50	(1)
<i>Idem</i>		(2)
<i>Idem</i>		(3)
Limit on investment by community endorsed venture capital corporation	51	(1)
Limit on investment by corporation registered under this Act		(2)
Exemption		(3)
Application for tax credit certificate	52	(1)
Where application may not be made		(2)
Amount of tax credit an individual may claim		(3)
Amount of tax credit a person, other than an individual, may claim		(4)
Tax credit certificate		(5)
Conditions for issuance of tax credit certificate		(6)
Form of application		(7)
Agent		(8)
Restrictions on ability to claim tax credit	53	

## PART V

DIRECT INVESTMENT IN TERRITORIAL BUSINESS  
CORPORATIONS

Definitions	54	
Application for registration	55	(1)
Conditions for registration		(2)
Certificate of registration		(3)
Approval to raise capital		(4)
Criteria for eligibility for registration	56	
Contents of territorial business corporation capital plan	57	(1)
Ability to alter territorial business corporation capital plan		(2)
Limits on capital	58	(1)
Exemption		(2)
Prohibited investments	59	
Related party shareholdings prohibited	60	(1)
<i>Idem</i>		(2)
Application for tax credit certificate	61	(1)
Where application may not be made		(2)
Amount of tax credit an individual may claim		(3)
Amount of tax credit a person, other than an individual, may claim		(4)
Tax credit certificate		(5)
Conditions for issuance of tax credit certificate		(6)
Form of application		(7)
Agent		(8)
Restrictions on ability to claim tax credit	62	

## PART VI

## GENERAL PROVISIONS

Revocation and suspension of registration	63	(1)
Notice of intent to revoke		(2)
Ministerial discretion to remove suspension		(3)
Surrender of registration	64	
Recovery of tax credit on revocation, surrender or wind-up	65	
Liability of directors and officers	66	
Recovery of tax credit where no entitlement	67	
Recovery of tax credit on early redemptions	68	(1)
Definitions		(2)
Withholding and remittance of tax		(3)
Liability of corporation		(4)
Compliance with investment requirements	69	(1)

Additional information		(2)
Failure to deliver certificate of compliance		(3)
Order to stop issuing tax credit certificates		(4)
Penalty		(5)
<i>Idem</i>		(6)
Saving		(7)
Tax on failure to hold eligible investments	70	(1)
Rebate		(2)
Reporting requirements	71	(1)
Exceptions		(2)
Keeping of records	72	(1)
Retention of records		(2)
Examination of affairs	73	(1)
Examination and copies of records		(2)
Annual maximum tax credit	74	(1)
Restriction on registration		(2)
Endorsement on share certificates	75	
Deemed refusal of application by Minister	76	
Calculations under this Act	77	
Debt due to Government	78	
Register	79	
Certification of employee group	80	(1)
Limits on certification		(2)
Payroll deduction plan	81	(1)
Establishment of payroll deduction plan		(2)
Issuance of shares under payroll deduction plan		(3)
"group of employees"		(4)
"employee" defined		(5)
Investigation	82	(1)
Application by Minister to Nunavut Court of Justice		(2)
<i>Ex parte</i> application		(3)
Timeliness of inspection or examination		(4)
Withholding of information		(5)
Extension of time	83	
Offences	84	(1)
Punishment		(2)
<i>Idem</i>		(3)
Liability of directors and officers		(4)
Exception		(5)
Regulations	85	
Deemed coming into force of <i>Risk Capital Investment Tax Credits Regulations</i>	86	
Coming into force	87	

**RISK CAPITAL INVESTMENT TAX CREDITS ACT****PART I****INTERPRETATION**

## Definitions

**1.** In this Act,

"active business" has the meaning assigned to it by subsection 248(1) of the *Income Tax Act* (Canada); (*entreprise active*)

"capital" means the total equity capital and debt of a corporation; (*capital*)

"Class A share", in respect of a corporation, means a share of a class of shares that entitles the holders of such class of shares to

- (a) receive notice of and, subject to the legislation under which the corporation is organized, to attend and vote at all meetings of the shareholders of the corporation,
- (b) receive dividends at the discretion of the board of directors of the corporation, and
- (c) receive, on dissolution of the corporation, all the assets of the corporation that remain after payment of all amounts payable to the holders of all other classes of shares of the corporation;  
(*action de catégorie A*)

"Class B share", in respect of a corporation, means a share of a class of shares that does not entitle the holders of such class of shares to receive dividends but does entitle the holders of such class of shares to

- (a) receive notice of and, subject to the legislation under which the corporation is organized, to attend and vote at all meetings of the shareholders of the corporation,
- (b) receive, on dissolution of the corporation, an amount equal to the amount of the equity capital received by the corporation on the issue of the Class B shares, and
- (c) vote as a class to elect a majority of the board of directors of the corporation; (*action de catégorie B*)

"community endorsed venture capital corporation" means a corporation registered under Part IV; (*société par actions à capital de risque soutenue par la collectivité*)

"co-operative association" means a co-operative association registered under the *Co-operative Associations Act*; (*association coopérative*)

"debt" means the outstanding principal amount of money borrowed by a corporation;  
(*dette*)



"eligible business" means an eligible business as defined in Part II, III, IV or V, as the context requires; (*entreprise admissible*)

"eligible investment" of a particular corporation means

- (a) a share that was issued to the particular corporation and that is a share of the capital stock of a corporation that was an eligible business at the time the share was issued,
- (b) a particular debt obligation that was issued to the particular corporation by a corporation that was an eligible business at the time the particular debt obligation was issued where
  - (i) the total unpaid principal amount of all debt obligations (including the particular debt obligation) issued by the eligible business to the particular corporation does not exceed the total cost to the particular corporation of all shares issued by the eligible business to the particular corporation,
  - (ii) the eligible business is not restricted by the terms of the particular debt obligation or by the terms of any agreement related to that obligation from incurring other debts,
  - (iii) the particular debt obligation, if secured, is secured solely by a floating charge on the assets of the eligible business or by a guarantee referred to in paragraph (c), and
  - (iv) the particular debt obligation, by its terms or by any agreement relating to that obligation, is subordinate to all other debt obligations of the eligible business, except that the particular debt obligation need not be subordinate to a debt obligation owing to a shareholder of the eligible business or to a person related to any such shareholder,
- (c) a guarantee provided by the particular corporation in respect of a debt obligation that would, if the debt obligation had been issued to the particular corporation at the time the guarantee was provided, have been an eligible investment under paragraph (b), or
- (d) an option or right granted by an eligible business, in conjunction with the issue of a share or a debt obligation that is an eligible investment, to acquire a share of the capital stock of the eligible business that would be an eligible investment if that share were issued at the time that the option or right was granted;  
(*placement admissible*)

"eligible investor" means an eligible investor as defined in Part II, III, IV or V, as the context requires; (*investisseur admissible*)

"eligible reserves" means

- (a) bonds, debentures, notes, mortgages or similar obligations issued or guaranteed by the Government of Canada, the government of any province or territory of Canada or any municipality in Nunavut,
- (b) bonds, debentures, notes or similar obligations issued or guaranteed by a taxable Canadian corporation
  - (i) that carries on active business in Nunavut, either directly or through a subsidiary corporation, and
  - (ii) the shares of which are listed on a stock exchange in Canada,
- (c) shares that are listed on a stock exchange in Canada and are issued by a taxable Canadian corporation that carries on active business in Nunavut, either directly or through a subsidiary corporation, and
- (d) any other investment that may be prescribed;  
(*réserves admissibles*)

"employee organization" means any organization of employees, or any branch or local of such an organization, the purposes of which include the regulation of relations between employers and employees; (*association d'employés*)

"employee venture capital corporation" means a corporation registered under Part III; (*société par actions à capital de risque de type actionnariat*)

"equity capital" means the amount of consideration paid in money for which shares of a corporation are issued; (*capital de participation*)

"fiscal year", in respect of a corporation, means the period for which the accounts of the business of the corporation have been ordinarily made up and accepted for the purposes of assessment under the *Income Tax Act* (Canada); (*exercice*)

"labour sponsored venture capital corporation" means a corporation registered under Part II; (*société par actions à capital de risque de travailleurs*)

"major shareholder", in respect of a corporation, means a person who owns, directly or indirectly, shares carrying more than 10% of the voting rights attached to the outstanding shares of any class of shares of the corporation and, for the purposes of this definition, a person shall be deemed to own each share of the corporation owned at that time by a related person; (*actionnaire important*)

"Minister" means the Minister of Finance or a person designated by the Minister to perform certain duties assigned to the Minister by or under this Act; (*ministre*)

"original purchaser" includes, for greater certainty, where a share or debt obligation is acquired by a qualifying trust, the individual whose entitlement to a tax credit under this Act would take into account the amount paid to acquire the share or debt obligation held by the qualifying trust; (*premier acheteur*)

"permanent establishment", in respect of a corporation, has the meaning assigned to it by subsection 400(2) of the *Income Tax Regulations*, made under the *Income Tax Act* (Canada); (*établissement stable*)

"person" means, except where the context requires otherwise, an individual, corporation, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator or other legal representative; (*personne*)

"private corporation" has the meaning assigned to it by subsection 89(1) of the *Income Tax Act* (Canada); (*société privée*)

"qualifying trust" has the meaning assigned to it by subsection 127.4(1) of the *Income Tax Act* (Canada); (*fiducie admissible*)

"registered retirement income fund" has the meaning assigned to it by subsection 146.3(1) of the *Income Tax Act* (Canada); (*fonds enregistré de revenu de retraite*)

"registered retirement savings plan" has the meaning assigned to it by subsection 146(1) of the *Income Tax Act* (Canada); (*régime enregistré d'épargne-retraite*)

"share offering document" means a prospectus, offering memorandum or other material, in a form and containing information satisfactory to the Minister and prepared in accordance with the laws of the relevant jurisdictions, that is delivered to eligible investors in connection with obtaining subscriptions for shares; (*notice d'offre d'actions*)

"society" means a society incorporated under the *Societies Act*; (*société*)

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*; (*conjoint*)

"taxable Canadian corporation" has the meaning assigned to it by subsection 89(1) of the *Income Tax Act* (Canada); (*société par actions canadienne imposable*)

"territorial business corporation" means a corporation registered under Part V. (*société par actions territoriale*) S.Nu. 2011,c.10,s.31(3).

Shares of qualifying trust deemed to be those of individual

2. For the purposes of this Act, an individual is deemed to have purchased, held or disposed of shares that are purchased, held or disposed of by a qualifying trust for that individual.

Related persons

3. For the purposes of this Act, persons are related to each other if they are related for the purposes of the *Income Tax Act* (Canada).

Controlled corporations

4. For the purposes of this Act,

- (a) one corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) is owned by the other corporation, by persons related to the other corporation or by the other corporation and persons related to the other corporation; and
- (b) a person is deemed to own shares that the person would own following the exercise of
  - (i) an option, warrant or right, or
  - (ii) a conversion right that is attached to a debt obligation or to a share of the corporation.

Paramountcy

5. Where there is a conflict or an inconsistency between this Act and the *Securities Act*, this Act shall prevail to the extent of the conflict or inconsistency.

6. **Repealed, S.Nu. 2011,c.10,s.31(2).**

## PART II

### LABOUR SPONSORED VENTURE CAPITAL CORPORATIONS

Definitions

7. In this Part,

"eligible business" means a taxable Canadian corporation, including a co-operative association,

- (a) that is a private corporation,
- (b) that is primarily engaged in one or more active businesses carried on in Nunavut,
- (c) that is incorporated under the laws of, or registered to carry on business in, Nunavut,
- (d) that pays 50% or more of its wages and salaries to employees whose ordinary place of employment is a permanent establishment of the eligible business located in Nunavut,

- (e) that has 50% or more of its full-time employees employed in respect of one or more active businesses carried on by the eligible business in Nunavut,
- (f) that has fixed assets located in Nunavut representing at least 80% of its total fixed assets, calculated in the prescribed manner,
- (g) whose total assets, together with the total assets of all related corporations, do not exceed \$50,000,000, calculated in the prescribed manner,
- (h) whose total number of employees, together with the total number of employees of all related corporations, does not exceed 500,
- (i) that is not substantially engaged in any activities that may be prescribed as ineligible, and
- (j) that meets all other criteria that may be prescribed;  
(*entreprise admissible*)

"eligible investor", in respect of a corporation registered under this Part, means a person who, at the time of subscribing for a Class A share of the corporation,

- (a) is resident in Canada,
- (b) is not, and will not be immediately after the issue of a Class A share, a major shareholder of the corporation and for the purposes of this definition, the reference to 10% in the definition "major shareholder" in section 1 shall be read as a reference to 20%, and
- (c) meets all other conditions that may be prescribed;  
(*investisseur admissible*)

"labour sponsored venture capital plan" means a plan containing the provisions referred to in section 11. (*plan d'investissement*) S.Nu. 2011,c.10,s.31(3).

#### Application for registration

**8.** (1) A corporation that meets the criteria set out in section 10 may apply for registration under this Part by delivering to the Minister an application, in the form approved by the Minister, containing the following:

- (a) a certified copy of the articles of the corporation;
- (b) a copy of the labour sponsored venture capital plan;
- (c) a copy of the exemption order granted under section 9 or a legal opinion given by a person entitled to practice law in Nunavut to the effect that all required documents have been filed and proceedings taken under the securities legislation of relevant jurisdictions to permit the issue and sale of Class A shares of the corporation to the eligible investors whose names have been set out in the labour sponsored venture capital plan;
- (d) a certificate in writing signed by all the directors of the corporation certifying that the information contained in the application is complete and accurate;

- (e) a legal opinion given by a person entitled to practice law in Nunavut to the effect that
  - (i) the corporation is duly incorporated and validly existing under the laws of Nunavut, and
  - (ii) the articles of the corporation comply with paragraphs 10(h) to (l);
- (f) the prescribed fee;
- (g) such other information as the Minister may require in order to determine compliance with this Act and the regulations.

#### Conditions for registration

(2) Subject to subsection 74(2), the Minister shall register the corporation, with conditions that the Minister considers appropriate, on being satisfied that

- (a) the corporation meets the criteria set out in section 10;
- (b) the intended investments of the corporation, as set out in the labour sponsored venture capital plan, will result in a substantial net economic benefit to Nunavut;
- (c) the labour sponsored venture capital plan complies with the spirit and intent of this Act and the regulations; and
- (d) any other conditions for the registration that may be prescribed are met.

#### Certificate of registration

(3) Where the Minister registers a corporation, the Minister shall issue a certificate of registration and the labour sponsored venture capital corporation is deemed to be registered under this Part on the date of registration contained in the certificate.

#### Approval to raise equity capital

(4) The certificate of registration constitutes approval, as at the date of registration, for the labour sponsored venture capital corporation to raise the amount of equity capital referred to in the labour sponsored venture capital plan.

S.Nu. 2011,c.10,s.31(3).

#### Exemption from *Securities Act*

**9.** For the purposes of section 8, the Minister may, by order, exempt a corporation from compliance with the *Securities Act*, or any specific provisions of the *Securities Act*, where the corporation has delivered to the Minister

- (a) a copy of its labour sponsored venture capital plan;
- (b) an undertaking in a form satisfactory to the Minister that the corporation
  - (i) will not make or hold investments in any eligible business other than those eligible businesses whose names have been set out in the labour sponsored venture capital plan, and
  - (ii) will not raise equity capital in excess of \$250,000; and
- (c) any other information that may be required by the regulations.

## Criteria for eligibility for registration

**10.** The following are the criteria referred to in section 8 for eligibility of a corporation for registration as a labour sponsored venture capital corporation:

- (a) the corporation is incorporated under the laws of Nunavut;
- (b) the corporation complies with all provisions of the *Business Corporations Act*, the *Securities Act* (unless an exemption order has been granted under section 9) and this Act;
- (c) the corporation is sponsored by an employee organization;
- (d) the corporation has not previously carried on business other than business related to obtaining registration under this Part;
- (e) the corporation is not registered to carry on business in any jurisdiction other than Nunavut;
- (f) the corporation has, or will have immediately after registration, equity capital of at least \$25,000;
- (g) the corporation has, or will have immediately after registration, issued Class A shares of the corporation to a minimum of five eligible investors, none of whom are related;
- (h) the articles of the corporation provide that the authorized capital of the corporation shall consist only of
  - (i) Class A shares that are issuable only to eligible investors and are redeemable or transferable only in the circumstances described in paragraph (k),
  - (ii) Class B shares that are issuable only to and may be held only by an employee organization, and
  - (iii) such additional classes of shares as may be authorized, if the rights, privileges, restrictions and conditions attached to the shares are approved by the board of directors of the corporation and by the Minister;
- (i) the articles of the corporation restrict the business of the corporation to assisting the development of eligible businesses and creating, maintaining and protecting jobs by providing financial and managerial advice to eligible businesses and by investing in eligible investments and eligible reserves;
- (j) the articles of the corporation provide that the corporation shall not reduce its paid-up capital in respect of a class of shares (other than Class B shares) otherwise than by way of a redemption of shares of the corporation or in such other manner as may be prescribed;
- (k) the articles of the corporation provide that
  - (i) the corporation may not redeem a Class A share in respect of which a tax credit certificate has been issued under this Act, unless the redemption occurs more than eight years after the date on which the share was issued or the corporation is requested in writing by the holder of the share to redeem it and

- (A) where the share is held by the original purchaser, the corporation is notified in writing that the original purchaser
    - (I) has requested the corporation to redeem the share within 30 days after the day on which the share was issued to the original purchaser and the tax credit certificate referred to in subsection 21(5) has been returned to the corporation, or
    - (II) has, after acquiring the share, become disabled and permanently unfit for work or terminally ill,
  - (B) the share is held by a person who notifies the corporation in writing that the share has devolved on the person as a consequence of the death of a shareholder of the corporation or the death of the annuitant under a trust governing a registered retirement savings plan or registered retirement income fund that was a holder of the share,
  - (C) the share is held as an investment by a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant and the original purchaser has died or, where the original purchaser is living, the corporation is notified in writing that the original purchaser has, after acquiring the share, become disabled and permanently unfit for work or terminally ill,
  - (D) the conditions set out in section 68 are satisfied at the time the share is redeemed, or
  - (E) the holder of the share has satisfied such other conditions as may be prescribed, and
- (ii) the corporation shall not register a transfer by the original purchaser, or by a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant, of a Class A share in respect of which a tax credit certificate has been issued under this Act, unless the transfer occurs more than eight years after the date on which the share was issued or the corporation is notified in writing that the share is being transferred
- (A) to be held as an investment of a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant,



- (B) as a consequence of the death of the original purchaser,
  - (C) at a time when the original purchaser has become disabled and permanently unfit for work or terminally ill,
  - (D) to the original purchaser or the spouse of the original purchaser, or
  - (E) in accordance with such other conditions as may be prescribed;
- (l) the articles of the corporation prohibit the corporation from lending money, guaranteeing a loan or providing other financial assistance to a shareholder of the corporation or to a person related to a shareholder of the corporation;
  - (m) the corporation meets all other conditions that may be prescribed.
- S.Nu. 2011,c.10,s.31(3).

#### Contents of labour sponsored venture capital plan

**11.** (1) Every labour sponsored venture capital plan shall contain or make provision for the following:

- (a) the names of the corporation and the sponsoring employee organization;
- (b) the estimated number of eligible investors proposed to be covered by the plan;
- (c) the amount of equity capital to be raised under the plan;
- (d) the names in full of the directors and officers of the corporation and the residential address of each;
- (e) a list of initial eligible investors including the eligible investor's name, social insurance number and residential address;
- (f) that the Class A shares to be issued under the plan
  - (i) will only be issued by the corporation on being fully paid for in cash,
  - (ii) will, immediately following their issue, be registered in the name of each shareholder that purchases them or in the name of a trustee, if the shares are held by the trustee for the benefit of a shareholder, and
  - (iii) do not have any rights or restrictions prohibited by regulation;
- (g) an investment confirmation, to be issued to each new shareholder within 30 days of share registration, setting out
  - (i) the number of Class A shares acquired,
  - (ii) the price paid for each share,
  - (iii) the total amount paid,
  - (iv) the procedure for obtaining a tax credit certificate under this Act, and
  - (v) any other information that may be prescribed;

- (h) a method of establishing the fair market value for the Class A shares by
  - (i) an independent opinion from a qualified person, or
  - (ii) a formula referencing financial information of the corporation,
 that applies consistently over the life of the plan, where the fair market value is determined without reference to the tax credit provided for under section 6.1 of the *Income Tax Act* or section 127.4 of the *Income Tax Act* (Canada);
- (i) that the corporation must provide to each shareholder annually
  - (i) the value established under paragraph (h), and the basis on which the value is established, and
  - (ii) disclosure with respect to major decisions of the corporation that materially affect that value;
- (j) a share offering document;
- (k) an investment plan including
  - (i) the corporation's investment policy and philosophy, and
  - (ii) if known,
    - (A) the names of the eligible businesses in which the corporation intends to invest,
    - (B) the amount and timing of the intended investments, and
    - (C) any special conditions or rights to be associated with the eligible investments to be acquired;
- (l) such other requirements as may be prescribed.

#### Ability to alter labour sponsored venture capital plan

(2) A labour sponsored venture capital plan shall not be altered without the prior approval of the Minister and without a resolution of the Class A shareholders having first been passed by a majority of the votes cast at a meeting called for such purpose.

#### Place of business

**12.** A corporation registered under this Part must establish a place of business in Nunavut within 30 days of being registered, and must afterwards maintain a place of business in Nunavut. S.Nu. 2011,c.10,s.31(3).

#### Limits on equity capital

**13.** (1) The equity capital raised by a labour sponsored venture capital corporation must not exceed

- (a) \$6,000,000 in any one fiscal year; and
- (b) \$30,000,000 in the aggregate.

### Exemption

(2) If the Minister considers it to be in the public interest, the Minister may by order and with or without conditions, in a particular case, exempt a labour sponsored venture capital corporation from the limits of equity capital set out in subsection (1) and specify other limits that are to apply in that particular case.

### Minimum investment requirements

**14.** A labour sponsored venture capital corporation shall have invested in eligible investments by the end of each fiscal year (the "current fiscal year") an amount equal to at least 70% of the amount by which the total equity capital raised during all preceding fiscal years on the issue of Class A shares exceeds the total of all amounts paid as a return of capital on those shares before the end of the current fiscal year.

### Form of assets

**15.** A labour sponsored venture capital corporation shall maintain its assets in one or more of

- (a) investments that are eligible investments; and
- (b) eligible reserves.

### Amount of guarantee included in calculating investment

**16.** For the purposes of sections 14 and 20, 25% of the amount of all guarantees provided by a labour sponsored venture capital corporation in respect of debt obligations of an eligible business shall be included in calculating the amount of the investment made by a labour sponsored venture capital corporation in that particular eligible business.

### Prohibited investments

**17.** A labour sponsored venture capital corporation shall not use funds raised through the issue of Class A shares in respect of which a tax credit certificate has been or may be issued under this Act to make or hold an investment in an eligible business if all or part of the proceeds of that investment are directly or indirectly used or intended to be used by the eligible business for the purpose of

- (a) lending;
- (b) investment in land except land that is incidental and ancillary to the active business in which the eligible business is primarily engaged;
- (c) reinvestment outside Nunavut;
- (d) purchasing or acquiring the securities of any person, other than shares of a corporation that is primarily engaged in one or more active businesses, where, after such purchase or acquisition, the eligible business would control the corporation;
- (e) funding all or part of the purchase by the eligible business of any services or assets at a price that is greater than the fair market value of the services or assets purchased;
- (f) the payment of dividends;
- (g) the return of capital to a shareholder of the eligible business;

- (h) the payment of the principal amount of any liabilities of the eligible business outstanding at the time the labour sponsored venture capital corporation invested in the eligible business;
  - (i) carrying on a business outside Nunavut; or
  - (j) any other purpose or use that may be prescribed.
- S.Nu. 2011,c.10,s.31(3).

#### Control of eligible business

**18.** A labour sponsored venture capital corporation shall not make or hold an investment in an eligible business if the labour sponsored venture capital corporation would control the eligible business after the investment is made.

#### Related party investments prohibited

**19.** (1) A labour sponsored venture capital corporation shall not make or hold an investment in an eligible business if a major shareholder of the labour sponsored venture capital corporation is, or was at any time during the two years immediately preceding the investment,

- (a) a major shareholder of the eligible business; or
- (b) the eligible business.

#### *Idem*

(2) A labour sponsored venture capital corporation shall not make or hold an investment in an eligible business if a director or officer of the labour sponsored venture capital corporation is, or was at any time during the two years immediately preceding the investment, a major shareholder of the eligible business.

#### *Idem*

(3) A labour sponsored venture capital corporation shall not make or hold an investment in an eligible business if the eligible business provides or has provided, directly or indirectly, a loan, guarantee or any other financial assistance to a person who is, or was at any time during the two years immediately preceding the investment,

- (a) the labour sponsored venture capital corporation;
- (b) a major shareholder of the labour sponsored venture capital corporation; or
- (c) a person related to a major shareholder of the labour sponsored venture capital corporation.

#### Limit on investment by labour sponsored venture capital corporation

**20.** (1) A labour sponsored venture capital corporation shall not make an investment in an eligible business if, as a result of that investment, the aggregate of all amounts received by the eligible business from the labour sponsored venture capital corporation would exceed 10% of the equity capital then issued and outstanding of the labour sponsored venture capital corporation received from eligible investors.

#### Limit on investment by corporation registered under this Act

(2) A labour sponsored venture capital corporation shall not make an investment in an eligible business if, as a result of that investment, the aggregate of all amounts received by the eligible business from the labour sponsored venture capital corporation and any other corporations registered under this Act would exceed \$6,000,000 within a four year period.

#### Exemption

(3) If the Minister considers it to be in the public interest, the Minister may by order and with or without conditions, in a particular case, exempt a labour sponsored venture capital corporation from the aggregate investment limits set out in subsections (1) and (2) and specify other limits that are to apply in that particular case.

#### Application for tax credit certificate

**21.** (1) A labour sponsored venture capital corporation shall apply to the Minister, on behalf of each eligible investor who has paid, during the calendar year or within 60 days following the calendar year, for Class A shares issued by the corporation, for a tax credit certificate in respect of the tax credit to be claimed by the eligible investor under section 6.1 of the *Income Tax Act*.

#### Where application may not be made

(2) Despite subsection (1), a labour sponsored venture capital corporation shall not apply to the Minister on behalf of an eligible investor for a tax credit certificate under this Act in respect of the purchase of Class A shares of the corporation by the eligible investor, where the corporation has applied on behalf of the eligible investor for a tax credit certificate under an Act of another province or territory in respect of the same Class A shares of the corporation.

#### Amount of tax credit an individual may claim

(3) The amount of the tax credit referred to in subsection (1) that may be claimed each year by an eligible investor who is an individual is equal to the aggregate of

- (a) 15% of the first \$5,000 paid by the individual to the labour sponsored venture capital corporation during the time period referred to in subsection (1) in consideration for Class A shares issued by the labour sponsored venture capital corporation; and
- (b) 30% of all amounts exceeding \$5,000 but not exceeding \$100,000 paid by the individual to the labour sponsored venture capital corporation during the time period referred to in subsection (1) in consideration for Class A shares issued by the labour sponsored venture capital corporation.

#### Amount of tax credit a person, other than an individual, may claim

(4) The amount of the tax credit referred to in subsection (1) that may be claimed each year by an eligible investor, other than an individual to whom subsection (3) applies, is equal to 15% of all amounts not exceeding \$200,000 paid by the person to the labour sponsored venture capital corporation during the time period referred to in subsection (1) in consideration for Class A shares issued by the labour sponsored venture capital corporation.

#### Tax credit certificate

(5) On receipt of an application under subsection (1), the Minister shall, subject to subsection (6), issue a tax credit certificate to the eligible investor indicating the amount of the tax credit and the taxation year in respect of which the tax credit may be claimed, unless the Minister considers that the labour sponsored venture capital corporation, or its officers, directors or shareholders, are conducting the business and affairs of the corporation in a manner that is contrary to the spirit and intent of this Act, whether or not there has been a contravention of this Act or the regulations.

#### Conditions for issuance of tax credit certificate

(6) The Minister shall not issue a tax credit certificate under this section unless the Minister is satisfied that

- (a) the labour sponsored venture corporation and its eligible investors are complying with the corporation's labour sponsored venture capital plan;
- (b) unless permitted by the regulations, the Class A shares to which the tax credit relates do not constitute a type of security that entitles the holder, in respect of the acquisition of those shares,
  - (i) to claim a tax credit under the *Income Tax Act* or the *Income Tax Act (Canada)*, other than a tax credit under section 6.1 of the *Income Tax Act* or section 127.4 of the *Income Tax Act (Canada)*, against tax otherwise payable,
  - (ii) to claim a deduction from income under the *Income Tax Act* or the *Income Tax Act (Canada)*, other than a deduction under subsection 146(5) of the *Income Tax Act (Canada)*, or
  - (iii) to receive any other financial assistance from any government, municipality or public authority;
- (c) no tax credit has been previously allowed under the *Income Tax Act* in respect of the Class A shares to which the tax credit certificate relates;
- (d) the Class A shares to which the tax credit certificate relates were purchased and acquired directly from the labour sponsored venture capital corporation issuing the shares;
- (e) the aggregate of all tax credits issued under this Act for the year does not exceed the amount prescribed; and
- (f) there has been compliance with any other conditions that may be prescribed.

## Form of application

- (7) An application under subsection (1) shall be made by filing with the Minister
- (a) an application in the form approved by the Minister that is signed by the secretary and one authorized officer of the labour sponsored venture capital corporation that has issued the Class A shares in respect of which a tax credit certificate is sought; and
  - (b) all additional material that may be required by the regulations.

## Agent

(8) The Minister may enter into an arrangement, on such terms and conditions as the Minister considers advisable, with a labour sponsored venture capital corporation authorizing the corporation to act as agent for the Minister in issuing tax credit certificates under this section on behalf of the Minister. S.Nu. 2011,c.10,s.31(3).

## Restrictions on ability to claim tax credit

**22.** Where the labour sponsored venture capital corporation redeems a Class A share in respect of which a tax credit certificate has been issued, within the eight year period following the date on which the share was issued and in circumstances other than those described in subclause 10(k)(i)(A)(I), the original purchaser of the share redeemed is not entitled to claim a tax credit under section 6.1 of the *Income Tax Act*

- (a) for the taxation year in which the redemption occurred; or
- (b) for either of the following two taxation years.

## PART III

## EMPLOYEE VENTURE CAPITAL CORPORATIONS

## Definitions

**23.** In this Part,

"eligible business" means a taxable Canadian corporation, including a co-operative association,

- (a) that is a private corporation,
- (b) that is primarily engaged in one or more active businesses carried on in Nunavut,
- (c) that is incorporated under the laws of, or registered to carry on business in, Nunavut,
- (d) that pays 75% or more of its wages and salaries to employees whose ordinary place of employment is a permanent establishment of the eligible business located in Nunavut,
- (e) that has 75% or more of its full-time employees employed in respect of one or more active businesses carried on by the eligible business in Nunavut,
- (f) that has fixed assets located in Nunavut representing at least 80% of its total fixed assets, calculated in the prescribed manner,

- (g) whose total assets do not exceed \$100,000,000, calculated in the prescribed manner,
- (h) whose total number of employees, together with the total number of employees of all related corporations, does not exceed 500,
- (i) that is not substantially engaged in any activities that may be prescribed as ineligible, and
- (j) that meets all other criteria that may be prescribed;  
(*entreprise admissible*)

"eligible employer" means an eligible business that

- (a) has a minimum of five full-time employees who are resident in Nunavut, and
- (b) meets any other conditions that may be prescribed;  
(*employeur admissible*)

"eligible investor", in respect of a corporation registered under this Part, means an individual who, at the time of subscribing for a Class A share of the corporation

- (a) is employed by the eligible employer identified in the corporation's application for registration under this Part on a continuing basis for an average of at least 15 hours each week,
- (b) is not a major shareholder of the eligible employer and for the purposes of this definition, the reference to 10% in the definition "major shareholder" in section 1 shall be read as a reference to 20%,
- (c) is not, and will not be immediately after the subscription for a Class A share, a major shareholder of the corporation and for the purposes of this definition, the reference to 10% in the definition "major shareholder" in section 1 shall be read as a reference to 20%, and
- (d) meets any other conditions that may be prescribed;  
(*investisseur admissible*)

"employee group" means a group of employees that has been certified as an employee group under subsection 80(2); (*groupe d'employés*)

"employee venture capital plan" means a plan containing the provisions referred to in section 26. (*plan d'investissement*) S.Nu. 2011,c.10,s.31(3).

Application for registration

**24.** (1) A corporation that meets the criteria set out in section 25 may apply for registration under this Part by delivering to the Minister an application, in the form approved by the Minister, containing the following:

- (a) a certified copy of the articles of the corporation;
- (b) a copy of the employee venture capital plan;



- (c) a legal opinion given by a person entitled to practice law in Nunavut to the effect that all required documents have been filed and proceedings taken under the securities legislation of relevant jurisdictions to permit the issue and sale of Class A shares of the corporation to the eligible investors whose names have been set out in the employee venture capital plan;
- (d) a certificate in writing signed by all the directors of the corporation certifying that the information contained in the application is complete and accurate;
- (e) a legal opinion given by a person entitled to practice law in Nunavut to the effect that
  - (i) the corporation is duly incorporated and validly existing under the laws of Nunavut, and
  - (ii) the articles of the corporation comply with paragraphs 25(h) to (l);
- (f) the prescribed fee;
- (g) such other information as the Minister may require in order to determine compliance with this Act and the regulations.

#### Conditions for registration

(2) Subject to subsection 74(2), the Minister shall register the corporation, with conditions that the Minister considers appropriate, on being satisfied that

- (a) the corporation meets the criteria set out in section 25;
- (b) the intended investments of the corporation, as set out in the employee venture capital plan, will result in a substantial net economic benefit to Nunavut;
- (c) the employee venture capital plan complies with the spirit and intent of this Act and the regulations; and
- (d) any other conditions for the registration that may be prescribed are met.

#### Certificate of registration

(3) Where the Minister registers a corporation, the Minister shall issue a certificate of registration and the employee venture capital corporation is deemed to be registered under this Part on the date of registration contained in the certificate.

#### Approval to raise equity capital

(4) The certificate of registration constitutes approval, as at the date of registration, for the employee venture capital corporation to raise the amount of equity capital referred to in the employee venture capital plan. S.Nu. 2011,c.10,s.31(3).

#### Criteria for eligibility for registration

**25.** The following are the criteria referred to in section 24 for eligibility of a corporation for registration as an employee venture capital corporation:

- (a) the corporation is incorporated under the laws of Nunavut;

- (b) the corporation complies with all provisions of the *Business Corporations Act*, the *Securities Act* and this Act;
- (c) the corporation is sponsored by an employee organization, an employee group or a co-operative association;
- (d) the corporation has not previously carried on business other than business related to obtaining registration under this Part;
- (e) the corporation is not registered to carry on business in any jurisdiction other than Nunavut;
- (f) the corporation has, or will have immediately after registration, equity capital of at least \$25,000;
- (g) the corporation has, or will have immediately after registration, issued Class A shares of the corporation to a minimum of five eligible investors, none of whom are related;
- (h) the articles of the corporation provide that the authorized capital of the corporation shall consist only of
  - (i) Class A shares that are issuable only to eligible investors and are redeemable or transferable only in the circumstances described in paragraph (k),
  - (ii) Class B shares that are issuable only to and may be held only by an employee organization, an employee group or a co-operative association, and
  - (iii) such additional classes of shares as may be authorized, if the rights, privileges, restrictions and conditions attached to the shares are approved by the board of directors of the corporation and by the Minister;
- (i) the articles of the corporation restrict the business of the corporation to
  - (i) making investments as permitted under this Act and providing business expertise, managerial expertise or financial support to the eligible employer in which the employee venture capital corporation has made or proposes to make an eligible investment, and
  - (ii) providing information to and educating employees as to the role of capital in business, the value of equity investments to an employee and the rights and obligations of corporations and their shareholders;
- (j) the articles of the corporation provide that the corporation shall not reduce its paid-up capital in respect of a class of shares (other than Class B shares) otherwise than by way of a redemption of shares of the corporation or in such other manner as may be prescribed;

- (k) the articles of the corporation provide that
  - (i) the corporation may not redeem a Class A share in respect of which a tax credit certificate has been issued under this Act unless the redemption occurs more than eight years after the date on which the share was issued or the corporation is requested in writing by the holder of the share to redeem it and
    - (A) where the share is held by the original purchaser, the corporation is notified in writing that the original purchaser
      - (I) has requested the corporation to redeem the share within 30 days after the day on which the share was issued to the original purchaser and the tax credit certificate referred to in subsection 36(4) has been returned to the corporation, or
      - (II) has, after acquiring the share, become disabled and permanently unfit for work or terminally ill,
    - (B) the share is held by a person who notifies the corporation in writing that the share has devolved on the person as a consequence of the death of a shareholder of the corporation or the death of the annuitant under a trust governing a registered retirement savings plan or registered retirement income fund that was a holder of the share,
    - (C) the share is held as an investment by a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant and the original purchaser has died or, where the original purchaser is living, the corporation is notified in writing that the original purchaser has, after acquiring the share, become disabled and permanently unfit for work or terminally ill,
    - (D) the conditions set out in section 68 are satisfied at the time the share is redeemed, or
    - (E) the holder of the share has satisfied such other conditions as may be prescribed, and
  - (ii) the corporation shall not register a transfer by the original purchaser, or by a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant, of a Class A share in respect of which a tax credit certificate has been issued under this Act, unless the

transfer occurs more than eight years after the date on which the share was issued or the corporation is notified in writing that the share is being transferred

- (A) to be held as an investment of a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant,
  - (B) as a consequence of the death of the original purchaser,
  - (C) at a time when the original purchaser has become disabled and permanently unfit for work or terminally ill,
  - (D) to the original purchaser or the spouse of the original purchaser, or
  - (E) in accordance with such other conditions as may be prescribed;
- (l) the articles of the corporation prohibit the corporation from lending money, guaranteeing a loan or providing other financial assistance to a shareholder of the corporation or to a person related to a shareholder of the corporation;
  - (m) the corporation meets all other conditions that may be prescribed.
- S.Nu. 2011,c.10,s.31(3).

#### Contents of employee venture capital plan

**26.** (1) Every employee venture capital plan shall contain or make provision for the following:

- (a) the names of the corporation, the eligible employer and the sponsoring employee organization, employee group or co-operative association;
- (b) the estimated number of eligible investors proposed to be covered by the plan;
- (c) the amount of equity capital to be raised under the plan;
- (d) the names in full of the directors and officers of the corporation and the residential address of each;
- (e) a list of initial eligible investors including the eligible investor's name, social insurance number and residential address;
- (f) that every eligible investor who has, for a period set out in the plan of not more than two years, been employed by the eligible employer, has an equal right, or a prorated right based on length of service, to purchase Class A shares under the plan;
- (g) that the Class A shares to be issued under the plan
  - (i) will only be issued by the corporation on being fully paid for in cash,

- (ii) will, immediately following their issue, be registered in the name of each shareholder that purchases them or in the name of a trustee, if the shares are held by the trustee for the benefit of a shareholder, and
  - (iii) do not have any rights or restrictions prohibited by regulation;
- (h) an investment confirmation, to be issued to each new shareholder within 30 days of share registration, setting out
  - (i) the number of Class A shares acquired,
  - (ii) the price paid for each share,
  - (iii) the total amount paid,
  - (iv) the procedure for obtaining a tax credit certificate under this Act, and
  - (v) any other information that may be prescribed;
- (i) a method of establishing the fair market value for the Class A shares by
  - (i) an independent opinion from a qualified person, or
  - (ii) a formula referencing financial information of the corporation,
 that applies consistently over the life of the plan, where the fair market value is determined without reference to the tax credit provided for under section 6.1 of the *Income Tax Act* or section 127.4 of the *Income Tax Act* (Canada);
- (j) that the corporation must provide to each shareholder annually
  - (i) the value established under paragraph (i), and the basis on which the value is established, and
  - (ii) disclosure with respect to major decisions of the corporation that materially affect that value;
- (k) a share offering document;
- (l) an investment plan including
  - (i) the corporation's investment policy and philosophy, and
  - (ii) if known,
    - (A) the names of the eligible businesses in which the corporation intends to invest,
    - (B) the amount and timing of the intended investments, and
    - (C) any special conditions or rights to be associated with the eligible investments to be acquired;
- (m) such other requirements as may be prescribed.

#### Ability to alter employee venture capital plan

(2) An employee venture capital plan shall not be altered without the prior approval of the Minister and without a resolution of the Class A shareholders having first been passed by a majority of the votes cast at a meeting called for such purpose.

#### Place of business

**27.** A corporation registered under this Part must establish a place of business in Nunavut within 30 days of being registered, and must afterwards maintain a place of business in Nunavut. S.Nu. 2011,c.10,s.31(3).

#### Limits on equity capital

**28.** (1) The equity capital raised by an employee venture capital corporation must not exceed

- (a) \$3,000,000 in any one fiscal year; and
- (b) \$6,000,000 within any four year period.

#### Exemption

(2) If the Minister considers it to be in the public interest, the Minister may by order and with or without conditions, in a particular case, exempt an employee venture capital corporation from the limits of equity capital set out in subsection (1) and specify other limits that are to apply in that particular case.

#### Minimum investment requirements

**29.** An employee venture capital corporation shall have invested in eligible investments of the eligible employer identified in the corporation's application for registration by the end of each fiscal year (the "current fiscal year") an amount equal to at least 70% of the amount by which the total equity capital raised during all preceding fiscal years on the issue of Class A shares exceeds the total of all amounts paid as a return of capital on those shares before the end of the current fiscal year.

#### Form of assets

**30.** An employee venture capital corporation shall maintain its assets in one or more of

- (a) investments that are eligible investments; and
- (b) eligible reserves.

#### Amount of guarantee included in calculating investments

**31.** For the purposes of sections 29 and 35, 25% of the amount of all guarantees provided by an employee venture capital corporation in respect of debt obligations of an eligible business shall be included in calculating the amount of the investment made by an employee venture capital corporation in that particular eligible business.

#### Prohibited investments

**32.** An employee venture capital corporation shall not use funds raised through the issue of Class A shares in respect of which a tax credit certificate has been or may be issued under this Act to make or hold an investment in an eligible business if

- (a) another employee venture capital corporation already holds or has made an investment in that eligible business; or
- (b) all or part of the proceeds of that investment are directly or indirectly used or intended to be used by the eligible business for the purpose of

- (i) lending,
  - (ii) investment in land except land that is incidental and ancillary to the active business in which the eligible business is primarily engaged,
  - (iii) reinvestment outside Nunavut,
  - (iv) purchasing or acquiring the securities of any person, other than shares of a corporation that is primarily engaged in one or more active businesses, where, after such purchase or acquisition, the eligible business would control the corporation;
  - (v) funding all or part of the purchase by the eligible business of any services or assets at a price that is greater than the fair market value of the services or assets purchased,
  - (vi) the payment of dividends,
  - (vii) the return of capital to a shareholder of the eligible business,
  - (viii) the payment of the principal amount of any liabilities of the eligible business outstanding at the time the employee venture capital corporation invested in the eligible business,
  - (ix) carrying on a business outside Nunavut, or
  - (x) any other purpose or use that may be prescribed.
- S.Nu. 2011,c.10,s.31(3).

#### Control of eligible business

**33.** An employee venture capital corporation shall not make or hold an investment in an eligible business if the employee venture capital corporation would control the eligible business after the investment is made.

#### Related party investments prohibited

**34.** (1) An employee venture capital corporation shall not make or hold an investment in an eligible business if a major shareholder of the employee venture capital corporation is, or was at any time during the two years immediately preceding the investment, a major shareholder of the eligible business.

#### *Idem*

(2) An employee venture capital corporation shall not make or hold an investment in an eligible business if a director or officer of the employee venture capital corporation is, or was at any time during the two years immediately preceding the investment, a major shareholder of the eligible business.

#### *Idem*

(3) An employee venture capital corporation shall not make or hold an investment in an eligible business if the eligible business provides or has provided, directly or indirectly, a loan, guarantee or any other financial assistance to a person who is, or was at any time during the two years immediately preceding the investment,

- (a) the employee venture capital corporation;

- (b) a major shareholder of the employee venture capital corporation;  
or
- (c) a person related to a major shareholder of the employee venture capital corporation.

#### Limit on investment by employee venture capital corporation

**35.** (1) An employee venture capital corporation shall not make or hold an investment in an eligible business if, as a result of that investment, the aggregate of all amounts received by the eligible business from the employee venture capital corporation would exceed \$6,000,000 within a four year period.

#### Limit on investment by corporation registered under this Act

(2) An employee venture capital corporation shall not make an investment in an eligible business if, as a result of that investment, the aggregate of all amounts received by the eligible business from the employee sponsored venture capital corporation and any other corporations registered under this Act would exceed \$6,000,000 within a four year period.

#### Exemption

(3) If the Minister considers it to be in the public interest, the Minister may by order and with or without conditions, in a particular case, exempt an employee venture capital corporation from the aggregate investment limits set out in subsections (1) and (2) and specify other limits that are to apply in that particular case.

#### Tax credit

**36.** (1) An employee venture capital corporation shall apply to the Minister on behalf of each eligible investor who has paid, during the calendar year or within 60 days following the calendar year, for Class A shares issued by the corporation, for a tax credit certificate in respect of the tax credit to be claimed by the eligible investor under section 6.1 of the *Income Tax Act*.

#### Where application may not be made

(2) Despite subsection (1), an employee venture capital corporation shall not apply to the Minister on behalf of an eligible investor for a tax credit certificate under this Act in respect of the purchase of Class A shares of the corporation by the eligible investor, where the corporation has applied on behalf of the eligible investor for a tax credit certificate under an Act of another province or territory in respect of the same Class A shares of the corporation.

#### Amount of tax credit

(3) The amount of the tax credit referred to in subsection (1) that may be claimed each year by an eligible investor is equal to 30% of all amounts not exceeding \$100,000 paid by the eligible investor to the employee venture capital corporation during the time period referred to in subsection (1) in consideration for Class A shares issued by the employee venture capital corporation.



### Tax credit certificate

(4) On receipt of an application under subsection (1), the Minister shall, subject to subsection (5), issue a tax credit certificate to the eligible investor indicating the amount of the tax credit and the taxation year in respect of which the tax credit may be claimed, unless the Minister considers that the employee venture capital corporation, or its officers, directors or shareholders, are conducting the business and affairs of the corporation in a manner that is contrary to the spirit and intent of this Act, whether or not there has been a contravention of this Act or the regulations.

### Conditions for issuance of tax credit certificate

(5) The Minister shall not issue a tax credit certificate under this section unless the Minister is satisfied that

- (a) the employee venture capital corporation and its eligible investors are complying with the employee venture capital plan;
- (b) unless permitted by the regulations, the Class A shares to which the tax credit relates do not constitute a type of security that entitles the holder, in respect of the acquisition of those shares,
  - (i) to claim a tax credit under the *Income Tax Act* or the *Income Tax Act (Canada)*, other than tax credit under section 6.1 of the *Income Tax Act* or section 127.4 of the *Income Tax Act (Canada)*, against tax otherwise payable,
  - (ii) to claim a deduction from income under the *Income Tax Act* or the *Income Tax Act (Canada)*, other than a deduction under subsection 146(5) of the *Income Tax Act (Canada)*, or
  - (iii) to receive any other financial assistance from any government, municipality or public authority;
- (c) no tax credit has been previously allowed under the *Income Tax Act* in respect of the Class A shares to which the tax credit certificate relates;
- (d) the Class A shares to which the tax credit certificate relates were purchased and acquired directly from the employee venture capital corporation issuing the shares;
- (e) the aggregate of all tax credits issued under this Act for the year does not exceed the amount prescribed by regulation; and
- (f) there has been compliance with any other conditions that may be prescribed.

### Form of application

(6) An application under subsection (1) shall be made by filing with the Minister

- (a) an application in the form approved by the Minister that is signed by the secretary and one authorized officer of the employee venture capital corporation that has issued the Class A shares in respect of which a tax credit certificate is sought; and
- (b) all additional material that may be required by the regulations.

## Agent

(7) The Minister may enter into an arrangement, on such terms and conditions as the Minister considers advisable, with an employee venture capital corporation authorizing the corporation to act as agent for the Minister in issuing tax credit certificates under this section on behalf of the Minister. S.Nu. 2011,c.10,s.31(3).

## Restrictions on ability to claim tax credit

**37.** Where an employee venture capital corporation redeems a Class A share in respect of which a tax credit certificate has been issued, within the eight year period following the date on which the share was issued and in circumstances other than those described in subclause 25(k)(i)(A)(I), the original purchaser of the share redeemed is not entitled to claim a tax credit under section 6.1 of the *Income Tax Act*

- (a) for the taxation year in which the redemption occurred; or
- (b) for either of the following two taxation years.

## PART IV

## COMMUNITY ENDORSED VENTURE CAPITAL CORPORATIONS

## Definitions

**38.** In this Part,

"community endorsed venture capital plan" means a plan containing the provisions referred to in section 42; (*plan d'investissement*)

"community endorsement" means a written motion of support for the community endorsed venture capital plan passed by the councils of the communities or municipalities where the majority of the northern employees of a targeted eligible business are resident; (*acte de soutien communautaire*)

"eligible business" means a taxable Canadian corporation, including a co-operative association,

- (a) that is a private corporation,
- (b) that is primarily engaged in one or more active businesses carried on in Nunavut,
- (c) that is incorporated under the laws of, or registered to carry on business in, Nunavut,
- (d) that pays 75% or more of its wages and salaries to employees whose ordinary place of employment is a permanent establishment of the eligible business located in Nunavut,
- (e) that has 75% or more of its full-time employees employed in respect of one or more active businesses carried on by the eligible business in Nunavut,
- (f) that has fixed assets located in Nunavut representing at least 80% of its total fixed assets, calculated in the prescribed manner,

- (g) whose total assets do not exceed \$100,000,000, calculated in the prescribed manner, or such other amount as may be prescribed at the time the community endorsed venture capital corporation makes the investment in the eligible business,
- (h) whose total number of employees does not exceed 500, or such other number of employees as may be prescribed at the time the community endorsed venture capital corporation makes the investment in the eligible business,
- (i) that is not substantially engaged in any activities that may be prescribed as ineligible, and
- (j) that meets all other criteria that may be prescribed;  
(*entreprise admissible*)

"eligible investor", in respect of a corporation registered under this Part, means a person who, at the time of subscribing for a Class A share of the corporation,

- (a) is resident in Canada,
- (b) is not, and will not be immediately after the issue of a Class A share, a major shareholder of the corporation and for the purposes of this definition, the reference to 10% in the definition "major shareholder" of section 1 shall be read as a reference to 20%, and
- (c) meets all other conditions that may be prescribed;  
(*investisseur admissible*)

"northern employees" means full-time employees of an eligible business whose ordinary place of employment is a permanent establishment of the eligible business located in Nunavut; (*employés du Nord*)

"targeted eligible business" means an eligible business identified in a community endorsed venture capital plan as an eligible business in which the community endorsed venture capital corporation intends to invest. (*entreprise admissible cible*)

S.Nu. 2011,c.10,s.31(3).

#### Application for registration

**39.** (1) A corporation that meets the criteria set out in section 41 may apply for registration under this Part by delivering to the Minister an application, in the form approved by the Minister, containing the following:

- (a) a certified copy of the articles of the corporation;
- (b) a copy of the community endorsement;
- (c) a copy of the community endorsed venture capital plan;
- (d) a copy of the exemption order granted under section 40 or a legal opinion given by a person entitled to practice law in Nunavut to the effect that all required documents have been filed and proceedings taken under the securities legislation of relevant jurisdictions to permit the issue and sale of Class A shares of the corporation to the eligible investors whose names have been set out in the community endorsed venture capital plan;

- (e) a certificate in writing signed by all the directors of the corporation certifying that the information contained in the application is complete and accurate;
- (f) a legal opinion given by a person entitled to practice law in Nunavut to the effect that
  - (i) the corporation is duly incorporated and validly existing under the laws of Nunavut, and
  - (ii) the articles of the corporation comply with paragraphs 41(g) to (l);
- (g) the prescribed fee;
- (h) such other information as the Minister may require in order to determine compliance with this Act and the regulations.

#### Sponsor of community endorsed venture capital corporation

(2) Any person or group of persons, including a society, may sponsor a community endorsed venture capital corporation by filing with the Minister an application for registration under subsection (1) on behalf of a corporation.

#### Conditions for registration

(3) Subject to subsection 74(2), the Minister shall register the corporation, with conditions that the Minister considers appropriate, on being satisfied that

- (a) the corporation meets the criteria set out in section 41;
- (b) the intended investments of the corporation, as set out in the community endorsed venture capital plan, will result in a substantial net economic benefit to Nunavut;
- (c) the community endorsed venture capital plan complies with the spirit and intent of this Act and the regulations; and
- (d) any other conditions for the registration that may be prescribed are met.

#### Certificate of registration

(4) Where the Minister registers a corporation, the Minister shall issue a certificate of registration and the community endorsed venture capital corporation is deemed to be registered under this Part on the date of registration contained in the certificate.

#### Approval to raise equity capital

(5) The certificate of registration constitutes approval, as at the date of registration, for the community endorsed venture capital corporation to raise the amount of equity capital referred to in the community endorsed venture capital plan.

S.Nu. 2011,c.10,s.31(3).

#### Exemption from *Securities Act*

**40.** For the purposes of section 39, the Minister may, by order, exempt a corporation from compliance with the *Securities Act*, or any specific provisions of the *Securities Act*, where the corporation has delivered to the Minister

- (a) a copy of its community endorsed venture capital plan;
- (b) an undertaking in a form satisfactory to the Minister that the corporation
  - (i) will not make or hold investments in any eligible business other than those eligible businesses whose names have been set out in the community endorsed venture capital plan, and
  - (ii) will not raise equity capital in excess of \$250,000; and
- (c) any information that may be required by the regulations.

#### Criteria for eligibility for registration

**41.** The following are the criteria referred to in section 39 for eligibility of a corporation for registration as a community endorsed venture capital corporation:

- (a) the corporation is incorporated under the laws of Nunavut;
- (b) the corporation complies with all provisions of the *Business Corporations Act*, the *Securities Act* (unless an exemption order has been granted under section 40) and this Act;
- (c) the corporation has not previously carried on business other than business related to obtaining registration under this Part;
- (d) the corporation is not registered to carry on business in any jurisdiction other than Nunavut;
- (e) the corporation has, or will have immediately after registration, equity capital of at least \$25,000;
- (f) the corporation has, or will have immediately after registration, issued Class A shares of the corporation to a minimum of five eligible investors, none of whom are related;
- (g) the articles of the corporation provide that the authorized capital of the corporation shall consist only of
  - (i) Class A shares that are issuable only to eligible investors and are redeemable or transferable only in the circumstances described in paragraph (k),
  - (ii) Class B shares that are issuable only to and may be held only by the sponsor or sponsors of the corporation, and
  - (iii) such additional classes of shares as may be authorized, if the rights, privileges, restrictions and conditions attached to the shares are approved by the board of directors of the corporation and by the Minister;
- (h) the articles of the corporation provide that one half of the directors must be resident in one of the communities or municipalities that have endorsed the corporation's community endorsed venture capital plan;
- (i) the articles of the corporation restrict the business of the corporation to assisting the development of eligible businesses and creating, maintaining and protecting jobs by providing financial and managerial advice to eligible businesses and by investing in eligible investments and eligible reserves;

- (j) the articles of the corporation provide that the corporation shall not reduce its paid-up capital in respect of a class of shares (other than Class B shares) otherwise than by way of a redemption of shares of the corporation or in such other manner as may be prescribed;
- (k) the articles of the corporation provide that
  - (i) the corporation may not redeem a Class A share in respect of which a tax credit certificate has been issued under this Act unless the redemption occurs more than five years after the date on which the share was issued or the corporation is requested in writing by the holder of the share to redeem it and
    - (A) where the share is held by the original purchaser, the corporation is notified in writing that the original purchaser
      - (I) has requested the corporation to redeem the share within 30 days after the day on which the share was issued to the original purchaser and the tax credit certificate referred to in subsection 52(5) has been returned to the corporation, or
      - (II) has, after acquiring the share, become disabled and permanently unfit for work or terminally ill,
    - (B) the share is held by a person who notifies the corporation in writing that the share has devolved on the person as a consequence of the death of a shareholder of the corporation or the death of the annuitant under a trust governing a registered retirement savings plan or registered retirement income fund that was a holder of the share,
    - (C) the share is held as an investment by a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant and the original purchaser has died or, where the original purchaser is living, the corporation is notified in writing that the original purchaser has, after acquiring the share, become disabled and permanently unfit for work or terminally ill,
    - (D) the conditions set out in section 68 are satisfied at the time the share is redeemed, or
    - (E) the holder of the share has satisfied such other conditions as may be prescribed, and

- (ii) the corporation shall not register a transfer by the original purchaser, or by a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant, of a Class A share in respect of which a tax credit certificate has been issued under this Act, unless the transfer occurs more than five years after the date on which the share was issued, or the corporation is notified in writing that the share is being transferred,
    - (A) to be held as an investment of a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant,
    - (B) as a consequence of the death of the original purchaser,
    - (C) at a time when the original purchaser has become disabled and permanently unfit for work or terminally ill,
    - (D) to the original purchaser or the spouse of the original purchaser, or
    - (E) in accordance with such other conditions as may be prescribed;
  - (l) the articles of the corporation prohibit the corporation from lending money, guaranteeing a loan or providing other financial assistance to a shareholder of the corporation or to a person related to a shareholder of the corporation;
  - (m) the corporation meets all other conditions that may be prescribed.
- S.Nu. 2011,c.10,s.31(3).

#### Contents of community endorsed venture capital plan

**42.** (1) Every community endorsed venture capital plan shall contain or make provision for the following:

- (a) the names of the corporation and its sponsor or sponsors;
- (b) the estimated number of eligible investors proposed to be covered by the plan;
- (c) the amount of equity capital to be raised under the plan;
- (d) the names in full of the directors and officers of the corporation and the residential address of each;
- (e) a list of initial eligible investors including the eligible investor's name, social insurance number and residential address;
- (f) that the Class A shares to be issued under the plan
  - (i) will only be issued by the corporation on being fully paid for in cash,

- (ii) will, immediately following their issue, be registered in the name of each shareholder that purchases them or in the name of a trustee, if the shares are held by the trustee for the benefit of a shareholder, and
  - (iii) do not have any rights or restrictions prohibited by regulation;
- (g) an investment confirmation, to be issued to each new shareholder within 30 days of share registration, setting out
  - (i) the number of Class A shares acquired,
  - (ii) the price paid for each share,
  - (iii) the total amount paid,
  - (iv) the procedure for obtaining a tax credit certificate under this Act, and
  - (v) any other information that may be prescribed;
- (h) a method of establishing the fair market value for the Class A shares by
  - (i) an independent opinion from a qualified person, or
  - (ii) a formula referencing financial information of the corporation,that applies consistently over the life of the plan, where the fair market value is determined without reference to the tax credit provided for under section 6.1 of the *Income Tax Act* or section 127.4 of the *Income Tax Act* (Canada);
- (i) that the corporation must provide to each shareholder annually
  - (i) the value established under paragraph (h), and the basis on which the value is established, and
  - (ii) disclosure with respect to major decisions of the corporation that materially affect that value;
- (j) a share offering document;
- (k) an investment plan including
  - (i) the corporation's investment policy and philosophy,
  - (ii) the names of the eligible businesses in which the corporation intends to invest, and
  - (iii) if known,
    - (A) a summary of the major business activities of these eligible businesses, including their major revenue sources,
    - (B) the amount and timing of the intended investments, and
    - (C) any special conditions or rights to be associated with the eligible investments to be acquired;
- (l) such other requirements as may be prescribed.



#### Ability to alter community endorsed venture capital plan

(2) A community endorsed venture capital plan shall not be altered without the prior approval of the Minister and without a resolution of the Class A shareholders having first been passed by a majority of the votes cast at a meeting called for such purpose.

#### Place of business

**43.** A corporation registered under this Part must establish a place of business in Nunavut within 30 days of being registered, and must afterwards maintain a place of business in Nunavut. S.Nu. 2011,c.10,s.31(3).

#### Limits on equity capital

**44.** (1) The equity capital raised by a community endorsed venture capital corporation must not exceed

- (a) \$6,000,000 in any one fiscal year; and
- (b) \$30,000,000 in the aggregate.

#### Exemption

(2) If the Minister considers it to be in the public interest, the Minister may by order and with or without conditions, in a particular case, exempt a community endorsed venture capital corporation from the limits of equity capital set out in subsection (1) and specify other limits that are to apply in that particular case.

#### Minimum investment requirements

**45.** A community endorsed venture capital corporation shall have invested in eligible investments by the end of each fiscal year (the "current fiscal year") an amount equal to at least 70% of the amount by which the total equity capital raised during all preceding fiscal years on the issue of Class A shares exceeds the total of all amounts paid as a return of capital on those shares before the end of the current fiscal year.

#### Form of assets

**46.** A community endorsed venture capital corporation shall maintain its assets in one or more of

- (a) investments that are eligible investments; and
- (b) eligible reserves.

#### Amount of guarantee included in calculating investments

**47.** For the purposes of sections 45 and 51, 25% of the amount of all guarantees provided by a community endorsed venture capital corporation in respect of debt obligations of an eligible business shall be included in calculating the amount of the investment made by a community endorsed venture capital corporation in that particular eligible business.

### Prohibited investments

**48.** A community endorsed venture capital corporation shall not use funds raised through the issue of Class A shares in respect of which a tax credit certificate has been or may be issued under this Act to make or hold an investment in an eligible business if all or part of the proceeds of that investment are directly or indirectly used or intended to be used by the eligible business for the purpose of

- (a) lending;
- (b) investment in land except land that is incidental and ancillary to the active business in which the eligible business is primarily engaged;
- (c) reinvestment outside Nunavut;
- (d) purchasing or acquiring the securities of any person, other than shares of a corporation that is primarily engaged in one or more active businesses, where, after such purchase or acquisition, the eligible business would control the corporation;
- (e) funding all or part of the purchase by the eligible business of any services or assets at a price that is greater than the fair market value of the services or assets purchased;
- (f) the payment of dividends;
- (g) the return of capital to a shareholder of the eligible business;
- (h) the payment of the principal amount of any liabilities of the eligible business outstanding at the time the community endorsed venture capital corporation invested in the eligible business;
- (i) carrying on a business outside Nunavut; or
- (j) any other purpose or use that may be prescribed.

S.Nu. 2011,c.10,s.31(3).

### Control of eligible business

**49.** A community endorsed venture capital corporation shall not make or hold an investment in an eligible business if the community endorsed venture capital corporation would control the eligible business after the investment is made.

### Related party investments prohibited

**50.** (1) A community endorsed venture capital corporation shall not make or hold an investment in an eligible business if a major shareholder of the community endorsed venture capital corporation is, or was at any time during the two years immediately preceding the investment,

- (a) a major shareholder of the eligible business; or
- (b) the eligible business.

### *Idem*

(2) A community endorsed venture capital corporation shall not make or hold an investment in an eligible business if a director or officer of the community endorsed venture capital corporation is, or was at any time during the two years immediately preceding the investment, a major shareholder of the eligible business.

*Idem*

(3) A community endorsed venture capital corporation shall not make or hold an investment in an eligible business if the eligible business provides or has provided, directly or indirectly, a loan, guarantee or any other financial assistance to a person who is, or was at any time during the two years immediately preceding the investment,

- (a) the community endorsed venture capital corporation;
- (b) a major shareholder of the community endorsed venture capital corporation; or
- (c) a person related to a major shareholder of the community endorsed venture capital corporation.

## Limit on investment by community endorsed venture capital corporation

**51.** (1) A community endorsed venture capital corporation shall not make an investment in an eligible business if, as a result of that investment, the aggregate of all amounts received by the eligible business from the community endorsed venture capital corporation would exceed the lesser of

- (a) \$6,000,000; and
- (b) 25% of the equity capital then issued and outstanding of the community endorsed venture capital corporation received from eligible investors.

## Limit on investment by corporation registered under this Act

(2) A community endorsed venture capital corporation shall not make an investment in an eligible business if, as a result of that investment, the aggregate of all amounts received by that eligible business from the community endorsed venture capital corporation and any other corporations registered under this Act would exceed \$6,000,000 within a four year period.

## Exemption

(3) If the Minister considers it to be in the public interest, the Minister may by order and with or without conditions, in a particular case, exempt a community endorsed venture capital corporation from the aggregate investment limits set out in subsections (1) and (2) and specify other limits that are to apply in that particular case.

## Application for tax credit certificate

**52.** (1) A community endorsed venture capital corporation shall apply to the Minister on behalf of each eligible investor who has paid, during the calendar year or within 60 days following the calendar year, for Class A shares issued by the corporation for a tax credit certificate in respect of a tax credit to be claimed by the eligible investor under section 6.1 of the *Income Tax Act*.

#### Where application may not be made

(2) Despite subsection (1), a community endorsed venture capital corporation shall not apply to the Minister on behalf of an eligible investor for a tax credit certificate under this Act in respect of the purchase of Class A shares of the corporation by the eligible investor, where the corporation has applied on behalf of the eligible investor for a tax credit certificate under an Act of another province or territory in respect of the same Class A shares of the corporation.

#### Amount of tax credit an individual may claim

(3) The amount of the tax credit referred to in subsection (1) that may be claimed each year by an eligible investor who is an individual is equal to 30% of all amounts not exceeding \$100,000 paid by the eligible investor to the community endorsed venture capital corporation during the time period referred to in subsection (1) in consideration for Class A shares issued by the community endorsed venture capital corporation.

#### Amount of tax credit a person, other than an individual, may claim

(4) The amount of the tax credit referred to in subsection (1) that may be claimed each year by an eligible investor, other than an individual to whom subsection (3) applies, is equal to 15% of all amounts not exceeding \$200,000 paid by the person to the community endorsed venture capital corporation during the time period referred to in subsection (1) in consideration for Class A shares issued by the community endorsed venture capital corporation.

#### Tax credit certificate

(5) On receipt of an application under subsection (1), the Minister shall, subject to subsection (6), issue a tax credit certificate to the eligible investor indicating the amount of the tax credit and the taxation year in respect of which the tax credit may be claimed, unless the Minister considers that the community endorsed venture capital corporation, or its officers, directors or shareholders, are conducting the business and affairs of the corporation in a manner that is contrary to the spirit and intent of this Act, whether or not there has been a contravention of this Act or the regulations.

#### Conditions for issuance of tax credit certificate

(6) The Minister shall not issue a tax credit certificate under this section unless the Minister is satisfied that

- (a) the community endorsed venture capital corporation and its eligible investors are complying with the corporation's community endorsed venture capital plan;
- (b) unless permitted by the regulations, the Class A shares to which the tax credit relates do not constitute a type of security that entitles the holder, in respect of the acquisition of those shares,
  - (i) to claim a tax credit under the *Income Tax Act* or the *Income Tax Act* (Canada), other than a tax credit under section 6.1 of the *Income Tax Act* against tax otherwise payable,

- (ii) to claim a deduction from income under the *Income Tax Act* or the *Income Tax Act (Canada)*, other than a deduction under subsection 146(5) of the *Income Tax Act (Canada)*, or
- (iii) to receive any other financial assistance from any government, municipality or public authority;
- (c) no tax credit has been previously allowed under the *Income Tax Act* in respect of the Class A shares to which the tax credit certificate relates;
- (d) the Class A shares to which the tax credit certificate relates were purchased and acquired directly from the community endorsed venture capital corporation issuing the shares;
- (e) the aggregate of all tax credits issued under this Act for the year does not exceed the amount prescribed by regulation; and
- (f) there has been compliance with any other conditions that may be prescribed.

#### Form of application

- (7) An application under subsection (1) shall be made by filing with the Minister,
- (a) an application in the form approved by the Minister that is signed by the secretary and one authorized officer of the community endorsed venture capital corporation that has issued the Class A shares in respect of which a tax credit certificate is sought; and
  - (b) all additional material that may be required by the regulations.

#### Agent

(8) The Minister may enter into an arrangement, on such terms and conditions as the Minister considers advisable, with a community endorsed venture capital corporation authorizing the corporation to act as agent for the Minister in issuing tax credit certificates under this section on behalf of the Minister. S.Nu. 2011,c.10,s.31(3).

#### Restrictions on ability to claim tax credit

**53.** Where a community endorsed venture capital corporation redeems a Class A share in respect of which a tax credit certificate has been issued, within the five year period following the date on which the share was issued and in circumstances other than those described in subclause 41(k)(i)(A)(I), the original purchaser of the share redeemed is not be entitled to claim a tax credit under section 6.1 of the *Income Tax Act*

- (a) for the taxation year in which the redemption occurred; or
- (b) for either of the following two taxation years.

## PART V

## DIRECT INVESTMENT IN TERRITORIAL BUSINESS CORPORATIONS

## Definitions

**54.** In this Part,

"eligible business" means a taxable Canadian corporation, including a co-operative association,

- (a) that is a private corporation,
- (b) that is primarily engaged in one or more active businesses carried on in Nunavut,
- (c) that is incorporated under the laws of, or registered to carry on business in, Nunavut,
- (d) that pays 75% or more of its wages and salaries to employees whose ordinary place of employment is a permanent establishment of the eligible business located in Nunavut,
- (e) that has 75% or more of its full-time employees employed in respect of one or more active businesses carried on by the eligible business in Nunavut,
- (f) that has fixed assets located in Nunavut representing at least 80% of its total fixed assets, calculated in the prescribed manner,
- (g) whose total assets do not exceed \$100,000,000, calculated in the prescribed manner, or such other amount as may be prescribed at the time the eligible business registers under this Part,
- (h) whose total number of employees does not exceed 500, or such other number of employees as may be prescribed at the time the eligible business registers under this Part,
- (i) that is not substantially engaged in any activities that may be prescribed as ineligible, and
- (j) that meets all other criteria that may be prescribed;  
(*entreprise admissible*)

"eligible investor", in respect of corporation registered under this Part, means a person who, at the time of investing in an eligible security of the corporation, meets any conditions that may be prescribed; (*investisseur admissible*)

"eligible security" of a corporation registered under this Part means

- (a) a share of the capital stock of the corporation,
- (b) a particular debt obligation of the corporation where
  - (i) the total unpaid principal amount of all debt obligations (including the particular debt obligation) issued by the corporation to the acquirer of the particular debt obligation does not exceed the total cost of the shares of the capital stock of the corporation held by the acquirer of the debt obligation,

- (ii) the corporation is not restricted by the terms of the particular debt obligation or by the terms of any agreement related to that obligation from incurring other debts,
- (iii) the particular debt obligation, if secured, is secured solely by a floating charge on the assets of the corporation, and
- (iv) the particular debt obligation, by its terms or by any agreement relating to that obligation, is subordinate to all other debt obligations of the corporation, except that the particular debt obligation need not be subordinate to a debt obligation owing to a shareholder of the corporation or to a person related to any such shareholder, or
- (c) an option or right granted by the corporation, in conjunction with the issue of a share or a debt obligation that is an eligible security, to acquire a share of the capital stock of the corporation that would be an eligible security if that share were issued at the time that the option or right was granted; (*valeur mobilière admissible*)

"specified issue" means the issue of eligible securities by a corporation registered under this Part; (*émission déterminée*)

"territorial business corporation capital plan" means a plan containing the provisions referred to in section 57. (*plan d'investissement*) S.Nu. 2011,c.10,s.31(3).

#### Application for registration

**55.** (1) A corporation that intends to make a specified issue and that meets the criteria set out in section 56 may apply for registration under this Part by delivering to the Minister an application, in the form approved by the Minister, containing the following:

- (a) a certified copy of the articles of the corporation;
- (b) a copy of the territorial business corporation capital plan;
- (c) a copy of the financial statements of the corporation for the preceding taxation year which have been reviewed by a chartered accountant, a certified general accountant or a certified management accountant registered in Nunavut;
- (d) a copy of the T2 income tax return of the corporation for the preceding taxation year;
- (e) a legal opinion given by a person entitled to practice law in Nunavut to the effect that all required documents have been filed and proceedings taken under the securities legislation of relevant jurisdictions to permit the issue and sale of eligible securities of the corporation to the eligible investors whose names have been set out in the territorial business corporation capital plan;
- (f) a certificate in writing signed by all the directors of the corporation certifying that the information contained in the application is complete and accurate;

- (g) a legal opinion given by a person entitled to practice law in Nunavut to the effect that the corporation is duly incorporated and validly existing under the laws of Nunavut;
- (h) the prescribed fee;
- (i) such other information that the Minister may require in order to determine compliance with this Act and the regulations.

#### Conditions for registration

(2) Subject to subsection 74(2), the Minister shall register the corporation, with conditions that the Minister considers appropriate, on being satisfied that

- (a) the corporation meets the criteria set out in section 56;
- (b) the proposed use of the capital to be raised by the specified issue, as set out in the territorial business corporation capital plan, will result in a substantial net economic benefit to Nunavut;
- (c) the territorial business corporation capital plan complies with the spirit and intent of this Act and the regulations; and
- (d) any other conditions for the registration that may be prescribed are met.

#### Certificate of registration

(3) Where the Minister registers a corporation, the Minister shall issue a certificate of registration and the corporation is deemed to be registered as a territorial business corporation under this Part on the date of registration contained in the certificate.

#### Approval to raise capital

(4) The certificate of registration constitutes approval as at the date of registration, for the territorial business corporation to raise the amount of capital referred to in the territorial business corporation capital plan. S.Nu. 2011,c.10,s.31(3).

#### Criteria for eligibility for registration

**56.** The following are the criteria referred to in section 55 for eligibility of a corporation for registration as a territorial business corporation:

- (a) the corporation is an eligible business;
- (b) the corporation complies with all provisions of the *Business Corporations Act*, the *Securities Act* and this Act;
- (c) the corporation has raised, or will have raised immediately after registration, capital of at least \$25,000 on the issue of eligible securities as part of a specified issue;
- (d) the corporation has issued, or will have issued immediately after registration, eligible securities as part of a specified issue to a minimum of five new eligible investors, none of whom have previously held eligible securities in the corporation and none of whom are related;
- (e) the corporation meets all other conditions that may be prescribed.



## Contents of territorial business corporation capital plan

**57.** (1) Every territorial business corporation capital plan shall contain or make provision for the following:

- (a) the name of the corporation;
- (b) the estimated number of eligible investors proposed to be covered by the plan;
- (c) the amount of capital to be raised under the plan;
- (d) the names in full of the directors and officers of the corporation and the residential address of each;
- (e) a list of initial eligible investors including the eligible investor's name, social insurance number and residential address;
- (f) that shares to be issued as part of a specified issue under the plan
  - (i) will only be issued by the corporation on being fully paid for in cash,
  - (ii) will, immediately following their issue, be registered in the name of each shareholder that purchases them or in the name of a trustee, if the shares are held by the trustee for the benefit of a shareholder, and
  - (iii) do not have any rights or restrictions prohibited by regulation;
- (g) that the corporation shall not redeem an eligible security in respect of which a tax credit certificate has been issued under this Act, unless the redemption occurs more than five years after the date on which the eligible security was issued, or the corporation is requested in writing by the holder of the eligible security to redeem it and
  - (i) where the eligible security is held by the original purchaser, the corporation is notified in writing that the original purchaser
    - (A) has requested the corporation to redeem the eligible security within 30 days after the day on which the eligible security was issued to the original purchaser and the tax credit certificate referred to in subsection 61(5) has been returned to the corporation, or
    - (B) has, after acquiring the eligible security, become disabled and permanently unfit for work or terminally ill,
  - (ii) the eligible security is held by a person who notifies the corporation in writing that the eligible security has devolved on the person as a consequence of the death of a holder of the eligible security of the corporation or the death of the annuitant under a trust governing a registered retirement savings plan or registered retirement income fund that was a holder of the eligible security,

- (iii) the eligible security is held as an investment by a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant and the original purchaser has died or, where the original purchaser is living, the corporation is notified in writing that the original purchaser has, after acquiring the eligible security, become disabled and permanently unfit for work or terminally ill,
  - (iv) the conditions set out in section 68 are satisfied at the time the eligible security is redeemed, or
  - (v) the holder of the eligible security has satisfied such other conditions as may be prescribed;
- (h) that the corporation shall not register a transfer by the original purchaser, or by a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant, of an eligible security in respect of which a tax credit certificate has been issued under this Act, unless the transfer occurs more than five years after the date on which the eligible security was issued, or the corporation is notified in writing that the eligible security is being transferred
  - (i) to be held as an investment of a registered retirement savings plan or a registered retirement income fund under which the original purchaser or the original purchaser's spouse is the annuitant,
  - (ii) as a consequence of the death of the original purchaser,
  - (iii) at a time when the original purchaser has become disabled and permanently unfit for work or terminally ill,
  - (iv) to the original purchaser or the spouse of the original purchaser, or
  - (v) in accordance with such other conditions as may be prescribed;
- (i) that the corporation is prohibited from lending money, guaranteeing a loan or providing other financial assistance to any person for the purpose of or in connection with a purchase of eligible securities that are part of a specified issue;
- (j) an investment confirmation, to be issued to each new eligible investor who invests in the corporation within 30 days of the investment having been made, setting out
  - (i) the number and type of eligible securities acquired,
  - (ii) the price paid for each eligible security,
  - (iii) the total amount paid,
  - (iv) the procedure for obtaining a tax credit certificate under this Act, and
  - (v) any other information that may be prescribed;
- (k) a method of establishing the fair market value for shares issued as part of a specified issue by

- (i) an independent opinion from a qualified person, or
  - (ii) a formula referencing financial information of the corporation,
- that applies consistently over the life of the plan, where the fair market value is determined without reference to the tax credit provided for under section 6.1 of the *Income Tax Act* or section 127.4 of the *Income Tax Act* (Canada);
- (l) that the corporation must provide to each shareholder annually
    - (i) the value established under paragraph (k), and the basis on which the value is established, and
    - (ii) disclosure with respect to major decisions of the corporation that materially affect that value;
  - (m) a share offering document;
  - (n) an investment plan including
    - (i) the investment policy and philosophy of the corporation,
    - (ii) the proposed use of the capital to be raised by the specified issue, and
    - (iii) a summary of the major business activities of the corporation, including their major revenue sources;
  - (o) such other requirements as may be prescribed.

#### Ability to alter territorial business corporation capital plan

(2) A territorial business corporation capital plan shall not be altered without the prior approval of the Minister and without those holders of eligible securities issued under the plan who are entitled to vote having first passed a resolution by a majority of the votes cast at a meeting called for such purpose.

#### Limits on capital

- 58.** (1) The capital raised by a specified issue must not exceed
- (a) \$3,000,000 in any one fiscal year; and
  - (b) \$6,000,000 within any four year period.

#### Exemption

(2) If the Minister considers it to be in the public interest, the Minister may by order and with or without conditions, in a particular case, exempt a territorial business corporation from the limits of capital set out in subsection (1) and specify other limits that are to apply in that particular case.

#### Prohibited investments

**59.** A territorial business corporation shall not use funds raised by a specified issue in respect of which a tax credit certificate has been or may be issued under this Act for the purpose of

- (a) lending;
- (b) investment in land except land that is incidental and ancillary to the active business in which the territorial business corporation is primarily engaged;

- (c) reinvestment outside Nunavut;
  - (d) purchasing or acquiring the securities of any person, other than shares of a corporation that is primarily engaged in one or more active businesses, where, after such purchase or acquisition, the territorial business corporation would control the corporation;
  - (e) funding all or part of the purchase by the territorial business corporation of any services or assets at a price that is greater than the fair market value of the services or assets purchased;
  - (f) the payment of dividends;
  - (g) the return of capital to a shareholder of the territorial business corporation;
  - (h) the payment of the principal amount of any liabilities of the territorial business corporation outstanding at the time of the specified issue;
  - (i) carrying on a business outside Nunavut; or
  - (j) any other purpose or use that may be prescribed.
- S.Nu. 2011,c.10,s.31(3).

#### Related party shareholdings prohibited

- 60.** (1) A territorial business corporation shall not issue an eligible security to an eligible investor as part of a specified issue, if the eligible investor
- (a) is a major shareholder of the territorial business corporation;
  - (b) was a major shareholder of the territorial business corporation at any time during the two years immediately preceding the issue of the eligible security; or
  - (c) would be a major shareholder of the territorial business corporation immediately after the issue of the eligible security.

#### *Idem*

(2) A territorial business corporation shall not issue an eligible security to an eligible investor as part of a specified issue, if the eligible investor is or was, at any time during the two years immediately preceding the issue of the eligible security, a director or officer of the territorial business corporation.

#### Application for tax credit certificate

**61.** (1) A territorial business corporation shall apply to the Minister on behalf of each eligible investor who has paid, during the calendar year or within 60 days following the calendar year, for eligible securities issued by the corporation as part of a specified issue, for a tax credit certificate in respect of a tax credit to be claimed by the eligible investor under section 6.1 of the *Income Tax Act*.

#### Where application may not be made

(2) Despite subsection (1), a territorial business corporation shall not apply to the Minister on behalf of an eligible investor for a tax credit certificate under this Act in respect of the purchase of eligible securities of the corporation by the eligible investor, where the corporation has applied on behalf of the eligible investor for a tax credit certificate under an Act of another province or territory in respect of the same eligible securities of the corporation.

#### Amount of tax credit an individual may claim

(3) The amount of the tax credit referred to in subsection (1) that may be claimed each year by an eligible investor who is an individual is equal to 30% of all amounts not exceeding \$100,000 paid by the eligible investor to the territorial business corporation during the time period referred to in subsection (1) in consideration for eligible securities issued by the territorial business corporation as part of a specified issue.

#### Amount of tax credit a person, other than an individual, may claim

(4) The amount of the tax credit referred to in subsection (1) that may be claimed each year by an eligible investor, other than an individual to whom subsection (3) applies, is equal to 15% of all amounts not exceeding \$200,000 paid by the eligible investor to the territorial business corporation during the time period referred to in subsection (1) in consideration for eligible securities issued by the territorial business corporation as part of a specified issue.

#### Tax credit certificate

(5) On receipt of an application under subsection (1), the Minister shall, subject to subsection (6), issue a tax credit certificate to the eligible investor indicating the amount of the tax credit and the taxation year in respect of which the tax credit may be claimed, unless the Minister considers that the territorial business corporation, or its officers, directors or shareholders, are conducting the business and affairs of the corporation in a manner that is contrary to the spirit and intent of this Act, whether or not there has been a contravention of this Act or the regulations.

#### Conditions for issuance of tax credit certificate

(6) The Minister shall not issue a tax credit certificate under this section unless the Minister is satisfied that

- (a) the territorial business corporation and its eligible investors are complying with the corporation's territorial business corporation capital plan;
- (b) unless permitted by the regulations, the eligible securities to which the tax credit relates do not constitute a type of security that entitles the holder, in respect of the acquisition of those eligible securities,

- (i) to claim a tax credit under the *Income Tax Act* or the *Income Tax Act (Canada)*, other than a tax credit under section 6.1 of the *Income Tax Act*, against tax otherwise payable,
- (ii) to claim a deduction from income under the *Income Tax Act* or the *Income Tax Act (Canada)*, other than a deduction under subsection 146(5) of the *Income Tax Act (Canada)*, or
- (iii) to receive any other financial assistance from any government, municipality or public authority;
- (c) no tax credit has been previously allowed under the *Income Tax Act* in respect of the eligible securities to which the tax credit certificate relates;
- (d) the eligible securities to which the tax credit certificate relates were purchased and acquired directly from the territorial business corporation issuing the eligible securities;
- (e) the aggregate of all tax credits issued under this Act for the year does not exceed the amount prescribed by regulation; and
- (f) there has been compliance with any other conditions that may be prescribed.

#### Form of application

- (7) An application under subsection (1) shall be made by filing with the Minister
  - (a) an application in the form approved by the Minister that is signed by the secretary and one authorized officer of the territorial business corporation that has issued the eligible securities in respect of which a tax credit certificate is sought; and
  - (b) all additional material that may be required by the regulations.

#### Agent

(8) The Minister may enter into an arrangement, on such terms and conditions as the Minister considers advisable, with a territorial business corporation authorizing the corporation to act as agent for the Minister in issuing tax credit certificates under this section on behalf of the Minister. S.Nu. 2011,c.10,s.31(3).

#### Restrictions on ability to claim tax credit

**62.** Where a territorial business corporation redeems an eligible security in respect of which a tax credit certificate has been issued, within the five year period following the date on which the eligible security was issued and in circumstances other than those described in clause 57(1)(g)(i)(A), the original purchaser of the eligible security redeemed is not be entitled to claim a tax credit under section 6.1 of the *Income Tax Act*

- (a) for the taxation year in which the redemption occurred; or
- (b) for either of the following two taxation years.

## PART VI

## GENERAL PROVISIONS

## Revocation and suspension of registration

**63.** (1) The Minister may suspend temporarily or may revoke permanently the registration of a corporation registered under this Act if

- (a) the corporation has failed to maintain the required level of eligible investments;
- (b) the corporation redeems, retracts or registers the transfer of a Class A share contrary to the prohibitions required by this Act to be contained in the articles of the corporation;
- (c) the corporation redeems, retracts or registers the transfer of an eligible security contrary to the prohibitions required by this Act to be contained in the territorial business corporation capital plan;
- (d) the corporation becomes party to a transaction or a series of transactions that result or would result in a direct or indirect change of control of the corporation, including an amalgamation, merger, arrangement or winding-up of the corporation, unless
  - (i) in the case of a labour sponsored venture capital corporation or an employee venture capital corporation, the date of the transaction or the first transaction in the series of transactions is at least eight years after the last date on which a Class A share was issued by the corporation, and
  - (ii) in the case of a community endorsed venture capital corporation or a territorial business corporation, the date of the transaction or the first transaction in the series of transactions is at least five years after the last date on which a Class A share or an eligible security as part of a specified issue, as the case may be, was issued by the corporation;
- (e) in the opinion of the Minister, the corporation contravenes this Act or the regulations;
- (f) the Minister is of the opinion that the corporation, or its directors, officers or shareholders, are conducting the business or affairs of the corporation in a manner that is contrary to the spirit and intent of this Act and the regulations; or
- (g) the corporation is no longer in compliance with its approved labour sponsored venture capital plan, employee venture capital plan, community endorsed venture capital plan or territorial business corporation capital plan, as the case may be.

## Notice of intent to revoke

(2) The Minister may not revoke the registration of a corporation without first notifying, by registered mail, the corporation of the Minister's intent and giving it, its representative and other persons that would be affected by the revocation the opportunity of making comment.

#### Ministerial discretion to remove suspension

(3) If the registration of a corporation is suspended under subsection (1), and the Minister, following a review, considers that the corporation is conducting its business or affairs in a manner that is consistent with spirit and intent of this Act, the Minister may remove the suspension, either generally or subject to the conditions that the Minister considers appropriate.

#### Surrender of registration

**64.** On the request of a corporation registered under this Act, the Minister may accept the surrender of the registration of the corporation if

- (a) the corporation pays to the Minister the amount, if any, required to be paid under section 65; and
- (b) the corporation meets all other conditions that may be prescribed.

#### Recovery of tax credit on revocation, surrender or wind-up

**65.** A corporation whose registration is revoked by the Minister, that makes a request under section 64 to surrender its registration under this Act or that proposes to wind up or dissolve shall immediately pay the Minister an amount of money equal to,

- (a) in the case of a labour sponsored venture capital corporation or an employee venture capital corporation, the total amount of all tax credits for which tax credit certificates were issued or may be issued under this Act in respect of all Class A shares of the corporation then outstanding which were issued within the eight years immediately preceding the date of the revocation, the surrender of registration or the winding up or dissolution;
- (b) in the case of a community endorsed venture capital corporation, the total amount of all tax credits for which tax credit certificates were issued or may be issued under this Act in respect of all Class A shares of the corporation then outstanding which were issued within the five years immediately preceding the date of the revocation, the surrender of registration or the winding up or dissolution; and
- (c) in the case of a territorial business corporation, the total amount of all tax credits for which tax credit certificates were issued or may be issued under this Act in respect of all eligible securities of the corporation then outstanding which were issued as part of a specified issued within the five years immediately preceding the date of the revocation, the surrender of registration or the winding up or dissolution.

#### Liability of directors and officers

**66.** Where a director or officer of a corporation permits or acquiesces to a transaction or event or a series of transactions or events that the person knew or ought to have known at that time would cause the certificate of registration to be revoked, that person is jointly and severally liable for the repayment under section 65.



## Recovery of tax credit where no entitlement

**67.** If a person receives, directly or indirectly, the benefit of all or part of a tax credit in respect of which the person is not entitled, the person must immediately pay the amount of the benefit to the Minister.

## Recovery of tax credit on early redemptions

**68.** (1) Where a corporation registered under this Act redeems, acquires or cancels a share or an eligible security in respect of which a tax credit certificate was issued under this Act prior to the expiry of the holding period, other than where the redemption is a permitted redemption, the person who was the shareholder or holder of the eligible security immediately before the redemption, acquisition or cancellation shall repay to the Minister an amount equal to the tax credit allowed in respect of such share or eligible security, or a lesser amount, if so prescribed.

## Definitions

(2) In subsection (1),

"holding period" means,

- (a) in respect of a share issued by a labour sponsored venture capital corporation or an employee venture capital corporation, eight years from the date on which the share was issued,
- (b) in respect of a share issued by a community endorsed venture capital corporation, five years from the date on which the share was issued, and
- (c) in respect of an eligible security issued by a territorial business corporation, five years from the date on which the eligible security was issued; (*période de détention*)

"permitted redemption" means,

- (a) in respect of a labour sponsored venture capital corporation, a redemption in the circumstances described in clause 10(k)(i)(A), (B) or (C),
- (b) in respect of an employee venture capital corporation, a redemption in the circumstances described in clause 25(k)(i)(A), (B) or (C),
- (c) in respect of a community endorsed venture capital corporation, a redemption in the circumstances described in clause 41(k)(i)(A), (B) or (C), and
- (d) in respect of a territorial business corporation, a redemption in the circumstances described in subparagraph 57(1)(g)(i), (ii) or (iii). (*rachat autorisé*)

#### Withholding and remittance of tax

(3) Where a corporation redeems, acquires or cancels a share or an eligible security in respect of which a tax credit certificate was issued under this Act and as a consequence, an amount is payable under subsection (1) by the person who was the shareholder or the holder of the eligible security immediately before the redemption, acquisition or cancellation, the corporation shall

- (a) withhold from the amount otherwise payable to the shareholder or the holder of the eligible security on the redemption, acquisition or cancellation the amount payable under subsection (1);
- (b) within 30 days after the redemption, acquisition or cancellation, remit the amount payable under subsection (1) to the Minister on behalf of the shareholder or the holder of the eligible security; and
- (c) submit with the remitted amount a statement in the form approved by the Minister.

#### Liability of corporation

(4) Where a corporation fails to withhold the amount required by paragraph (3)(a) from an amount paid to a shareholder or the holder of the eligible security, the corporation is liable to pay on behalf of the shareholder or the holder of the eligible security the amount the corporation failed to withhold, and is entitled to recover that amount from the shareholder or the holder of the eligible security.

#### Compliance with investment requirements

**69.** (1) A corporation registered under Part II, III or IV shall, within 60 days from the end of each fiscal year of the corporation, deliver to the Minister a certificate of the corporation signed by all the directors of the corporation certifying that the corporation is in compliance with section 14, 29 or 45, as applicable, as of the last day of that fiscal year.

#### Additional information

(2) At the request of the Minister, a corporation shall provide, in addition to the certificate under subsection (1), sufficient additional information or documentation to prove to the satisfaction of the Minister that the corporation is in compliance with section 14, 29 or 45, as applicable.

#### Failure to deliver certificate of compliance

(3) Despite any other provision contained in this Act, if a corporation fails to deliver to the Minister a certificate required under subsection (1) within the time required by subsection (1) or the additional information or documentation requested under subsection (2) by the date specified in the Minister's request,

- (a) the corporation shall be considered not to be in compliance with section 14, 29 or 45, as applicable, as of the date of the failure to deliver the certificate, information or documentation; and

- (b) no further tax credit certificates shall be issued in respect of Class A shares issued by the corporation after the date of the failure to deliver the certificate, information or documentation until the corporation delivers the certificate or provides the information or documentation.

#### Order to stop issuing tax credit certificates

(4) If the Minister is of the opinion that a corporation is not in compliance with section 14, 29 or 45, as applicable, at any particular time, the Minister may stop issuing tax credit certificates in respect of Class A shares of the corporation issued after that particular time or, if the corporation issues tax credit certificates under an arrangement referred to in subsection 21(8), 36(7), or 52(8), order the corporation to stop issuing tax credit certificates in respect of Class A shares issued by the corporation after the date of the order until the corporation provides proof to the satisfaction of the Minister that the corporation is in compliance with section 14, 29 or 45, as applicable.

#### Penalty

(5) A corporation shall pay to the Minister a penalty equal to twice the total amount of tax credits for which it issued tax credit certificates contrary to subsection (3) or (4) under an arrangement referred to in subsection 21(8), 36(7), or 52(8).

#### *Idem*

(6) If a corporation has delivered a certificate referred to in subsection (1) but was not in compliance with section 14, 29 or 45, as applicable, as of the date specified in the certificate, the corporation shall pay to the Minister a penalty equal to twice the total amount of all tax credits in respect of Class A shares issued at a time when the corporation was not in compliance with section 14, 29 or 45, as applicable, and for which tax credit certificates were issued.

#### Saving

(7) If a corporation can provide proof to the satisfaction of the Minister that a tax credit certificate in respect of a tax credit was issued at a time when the corporation was in compliance with section 14, 29 or 45, as applicable, the amount of any penalty payable under this section shall be determined without reference to the tax credit.

S.Nu. 2011,c.10,s.31(3).

#### Tax on failure to hold eligible investments

**70.** (1) A corporation registered under Part II, III or IV that fails to have the level of eligible investments required by section 14, 29 or 45, as applicable, at the end of a particular fiscal year shall pay to the Government of Nunavut a tax for the year equal to the amount determined by the formula

$$\frac{(A \times 30) - B}{100}$$

where

- (a) A is the amount by which the amount of the corporation's equity capital raised on the issue of its Class A shares that is required by section 14, 29 or 45, as applicable, to be invested in eligible investments by the end of the fiscal year exceeds the total cost to the corporation of the eligible investments held by the corporation at the end of the fiscal year, and
- (b) B is the amount of any tax paid by the corporation under this subsection in respect of any preceding year that has not been rebated to the corporation under subsection (2).

#### Rebate

(2) On receipt of an application from a corporation that has paid a tax under subsection (1) in respect of a fiscal year, the Minister may rebate the tax without interest to the corporation if

- (a) the application is received within three years after the end of the fiscal year in respect of which the tax was imposed; and
  - (b) the Minister is satisfied that, no later than the end of the second fiscal year ending after the fiscal year in respect of which the tax was imposed, the corporation has kept invested in eligible investments throughout a full fiscal year and continues to keep invested in eligible investments an amount equal to at least 70% of the amount by which the corporation's total equity raised on the issue of its Class A shares exceeds the total of all amounts paid as a return of capital on those shares.
- S.Nu. 2011,c.10,s.31(3).

#### Reporting requirements

**71.** (1) Within 180 days after the end of each fiscal year of a corporation registered under this Act commencing after the end of the fiscal year in which the corporation is registered under this Act, the corporation shall prepare and file with the Minister an annual return in respect of that fiscal year in the form approved by the Minister.

#### Exceptions

- (2) Unless otherwise ordered by the Minister, subsection (1) does not apply,
- (a) in the case of a labour sponsored venture capital corporation or an employee venture capital corporation, after eight years have elapsed since the date on which the corporation last issued Class A shares;
  - (b) in the case of a community endorsed venture capital corporation, after five years have elapsed since the date on which the corporation last issued Class A shares; and
  - (c) in the case of a territorial business corporation, after five years have elapsed since the date on which the corporation last issued eligible securities as part of a specified issue.

#### Keeping of records

**72.** (1) A corporation registered under this Act and every eligible business invested in by a corporation registered under this Act shall maintain records and books of account at its permanent establishment in Nunavut, or at such other place as may be designated by the Minister, in such form and containing such information as will enable the Minister to verify that the corporation or eligible business has complied with this Act and the regulations.

#### Retention of records

(2) Every corporation registered under this Act and every eligible business required to keep records and books of account shall, until permission for their disposal is obtained from the Minister, retain every such record or book of account and every document or voucher necessary to verify the information in such records and books of account. S.Nu. 2011,c.10,s.31(3).

#### Examination of affairs

**73.** (1) For the purpose of determining compliance with this Act and the regulations, the Minister or a person designated by the Minister may, during normal business hours, make an examination of the affairs of

- (a) a corporation that is registered under this Act;
- (b) a person who is or was a shareholder of a corporation that is registered under this Act;
- (c) an employee group certified under subsection 80(2); or
- (d) an eligible business invested in by a corporation registered under this Act.

#### Examination and copies of records

(2) The Minister or person making the examination under this section may, for the purposes of determining compliance with this Act and the regulations, examine the records and securities of a person or other entity referred to in subsection (1), and may make copies of those records and securities.

#### Annual maximum tax credit

**74.** (1) The Commissioner, on the recommendation of the Minister, may make regulations prescribing, in respect of any year, an amount to be known as the annual maximum tax credit.

#### Restriction on registration

(2) The Minister shall not register a corporation under this Act unless the Minister is satisfied that the amounts that will be deductible or deducted under section 6.1 of the *Income Tax Act* during a particular year will not exceed the annual maximum tax credit for that year.

#### Endorsement on share certificates

**75.** Where a corporation registered under this Act issues holders of its shares certificates of that class of shares, the corporation shall put the following endorsement on the certificates: "The right to redeem or transfer this class of shares is subject to the provisions of the *Risk Capital Investment Tax Credits Act*".

#### Deemed refusal of application by Minister

**76.** Where the Minister does not register a corporation within 90 days after receipt of the application or where the Minister does not approve additional equity capital, issue a tax credit certificate or authorize a payment under this Act for which an application is made, the Minister is deemed to have refused the application.

#### Calculations under this Act

**77.** A calculation or determination under this Act or the regulations may be based on projections that the Minister considers to be appropriate.

#### Debt due to Government

**78.** An amount required to be paid to the Minister under this Act is a debt due to the Government of Nunavut. S.Nu. 2011,c.10,s.31(3).

#### Register

**79.** The Minister shall maintain a register of all corporations registered under this Act and the register shall be open for public inspection during normal business hours.

#### Certification of employee group

**80.** (1) A group consisting of a minimum of five employees who the Minister considers are or will be eligible investors under Part III may apply to the Minister for certification as an employee group for the purposes of this Act.

#### Limits on certification

(2) The Minister may certify, with or without conditions, not more than one employee group with respect to each employee venture capital corporation.

#### Payroll deduction plan

**81.** (1) A group of employees of an employer may apply to the employer for the establishment of a payroll deduction plan to be administered by the employer for the purpose of the purchase by the employees of shares of a corporation registered under this Act.

#### Establishment of payroll deduction plan

(2) An employer who receives an application under subsection (1) shall cause the payroll deduction plan to be established and administered in accordance with such terms and conditions as may be agreed to by the employees and the employer.

#### Issuance of shares under payroll deduction plan

(3) No payroll deduction plan under which funds are held and invested in shares of a corporation registered under this Act and no agreements or arrangements in connection with the payroll deduction plan shall

- (a) permit the issue of a share of a corporation registered under this Act to or for the benefit of any person other than the employee from whose remuneration an amount has been deducted under the plan for the purchase of the share; or
- (b) permit the issue of a share by the corporation before the full purchase price of the share has been paid by the employee either directly or through the payroll deduction plan.

#### "group of employees"

(4) In order to apply to the employer for the establishment of a payroll deduction plan under this section, a "group of employees" must consist of at least the greater of

- (a) 15% of the total number of employees employed by the employer; and
- (b) 250 employees.

#### "employee" defined

(5) For the purposes of this section, "employee" of an employer means an individual who has been employed on a continuing basis for an average of at least 15 hours each week by the employer.

#### Investigation

**82.** (1) The Minister may appoint a person to make whatever investigation the Minister considers appropriate for the administration of this Act.

#### Application by Minister to Nunavut Court of Justice

(2) On the application of the Minister or an investigator appointed under subsection (1) and on being satisfied by information on oath that it is necessary and in the public interest for any purpose relating to an investigation under subsection (1), the Nunavut Court of Justice may make an order authorizing the investigator

- (a) to enter into the premises or on the land of a person at any reasonable time for the purpose of carrying out an inspection or examination;
- (b) to require the production of any records, securities or things and to inspect or examine them; and
- (c) on giving a receipt, to remove any records, securities or things inspected or examined under paragraph (b) for further inspection or examination.

*Ex parte* application

(3) Unless the Nunavut Court of Justice otherwise directs, an application for an order under subsection (2) may be made *ex parte* and heard *in camera*.

## Timeliness of inspection or examination

(4) Inspection or examination under subsection (2) shall be completed as soon as practicable and any records, securities or things removed shall be promptly returned to the person who produced them.

## Withholding of information

(5) No person shall withhold, destroy, conceal or refuse to give any information or produce any record, security or thing reasonably required under this section by the investigator. S.Nu. 2011,c.10,s.31(3).

## Extension of time

**83.** The Minister may extend, with or without conditions, the time limit for the doing of anything under this Act or the regulations and may grant the extension despite that the time limit to be extended has expired. S.Nu. 2011,c.10,s.31(3).

## Offences

- 84.** (1) Every person is guilty of an offence who
- (a) makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations, that, at the time and in the light of the circumstances under which the statement is made, is false or misleading with respect to a material fact or that omits to state a material fact, the omission of which makes that statement false or misleading;
  - (b) makes, or assists in making, false or misleading entries in the records or books of account of a corporation registered under this Act or an eligible business invested in by a corporation registered under this Act;
  - (c) knowingly fails to record material particulars in the records or books of account of a corporation registered under this Act or an eligible business invested in by a corporation registered under this Act;
  - (d) fails to comply with an order, decision, direction or demand made under this Act or the regulations; or
  - (e) contravenes this Act or the regulations.

## Punishment

(2) An individual who is found guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than \$30,000 or to imprisonment for a term not exceeding one year or to both.



*Idem*

(3) A corporation that is found guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than \$100,000.

## Liability of directors and officers

(4) Every director or officer of a corporation found guilty of an offence under subsection (1) who authorized, permitted or acquiesced in the offence is guilty of an offence and liable on summary conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

## Exception

(5) A person is not guilty of an offence under this section in relation to a statement made if the person did not know that the statement was false or misleading and, in the exercise of reasonable diligence, could not have known that the statement was false or misleading.

## Regulations

**85.** The Commissioner, on the recommendation of the Minister, may make regulations

- (a) respecting any matter that may be prescribed under this Act;
  - (b) defining any word or expression used in this Act that has not already been expressly defined in this Act;
  - (c) requiring the provision of information or returns respecting any matter required in assessing compliance with this Act;
  - (d) prescribing the maximum annual expenses that may be incurred by corporations registered under this Act;
  - (e) prescribing that a certain percentage of the amount of equity capital required to be invested and maintained in eligible investments under this Act be invested and maintained in eligible businesses that meet certain specified criteria;
  - (f) establishing periods of time to be taken into account in calculations or determinations under this Act or the regulations, and varying periods set by this Act;
  - (f.1) requiring the payment of fees for services provided under this Act and prescribing the fees payable for these services; and
  - (g) respecting any other matter that, in the opinion of the Commissioner, is necessary for carrying out the purposes and provisions of this Act.
- S.N.W.T. 1999,c.11,s.1(2).

Deemed coming into force of *Risk Capital Investment Tax Credits Regulations*

**86.** The *Risk Capital Investment Tax Credits Regulations* registered under the *Statutory Instruments Act* on February 12, 1999 as regulation numbered R-013-99, are deemed to have been enacted and to have come into force on September 25, 1998 and to continue to have effect from that date, until they are repealed or replaced, despite section 8 of the *Statutory Instruments Act*. S.N.W.T. 1999,c.11,s.1(3); S.Nu. 2011,c.10,s.31(3).

Coming into force

**87.** This Act is deemed to have come into force on September 25, 1998. S.N.W.T. 1999,c.11,s.1(3).