

INVESTING IN A DIVERSIFIED ALBERTA ECONOMY ACT

Chapter I-10.5

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

- 1 In this Act,

- (a) “federal Act” means the *Income Tax Act* (Canada);
- (b) “Finance Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for the *Financial Administration Act*;
- (c) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (d) “prescribed” means prescribed by regulation.

Part 1

Investor Tax Credits

Definitions and interpretation

2(1) In this Part,

- (a) “affiliate”, if used to indicate a relationship between corporations, means
 - (i) one is the subsidiary of the other,
 - (ii) both are subsidiaries of the same corporation,
 - (iii) both are controlled by the same person or the same group of persons, or
 - (iv) one of them is controlled by one person and the other is controlled by an associate, as defined in clause (c)(v) or (vi), of that person;
- (b) “annuitant”,
 - (i) in relation to a trust governed by a registered retirement savings plan as defined in the federal Act, means an annuitant as defined in subsection 146(1) of that Act, and
 - (ii) in relation to a trust governed by a registered retirement income fund as defined in the federal Act, means an annuitant as defined in subsection 146.3(1) of that Act;
- (c) “associate”, if used to indicate a relationship with a person, means
 - (i) a corporation of which the person owns, directly or indirectly, shares carrying 10% or more of the voting rights for the election of the directors of the corporation,

- (ii) a partner of the person,
- (iii) a participant in a joint venture with the person,
- (iv) a trust or estate
 - (A) in which the person has, in the opinion of the Minister, a substantial beneficial interest, or
 - (B) for which the person serves as trustee or in a similar capacity,
- (v) a spouse, parent, grandparent, child, grandchild, brother or sister of the person, or
- (vi) a parent, grandparent, child, grandchild, brother or sister of the spouse of the person, residing in the same residence as the person;
- (d) “community economic development corporation” means a corporation or cooperative registered under Division 2;
- (e) “cooperative” means a cooperative incorporated under the *Cooperatives Act*;
- (f) “debt obligation” includes a mortgage, bond, debenture, note, loan or similar obligation, whether secured or unsecured;
- (g) “eligible business corporation” means a small business registered under Division 3;
- (h) “eligible investment” means an investment permitted by section 12 or a prescribed investment;
- (i) “employee” includes a person engaged by a small business for a prescribed period calculated in the prescribed manner;
- (j) “equity capital” means, subject to section 13(2), the consideration in money received
 - (i) by a corporation for its issued shares before or after its registration under Division 1 as a venture capital corporation,
 - (ii) by a corporation for its issued shares before or after its registration under Division 2 as a community economic development corporation,

- (iii) by a cooperative for its issued investment shares before or after its registration under Division 2 as a community economic development corporation, or
- (iv) by a small business for its issued equity shares;
- (k) “equity share” means
 - (i) a share of a class of shares whether or not the share carries voting rights, but does not include a share having prescribed rights and restrictions,
 - (ii) any warrant, option or right entitling the holder to purchase or acquire a share referred to in subclause (i), or
 - (iii) any other prescribed security;
- (l) “major shareholder”, in relation to a corporation, means a person whose shares in the corporation, together with the shares, if any, owned by the person’s associates and affiliates,
 - (i) carry in the aggregate 10% or more of the voting rights, under any circumstances, attached to shares in the corporation, or
 - (ii) carry in the aggregate less than 10% of the voting rights, under any circumstances, attached to shares in the corporation if the person is a member of a common interest group whose members own or hold shares that allow the group to control the corporation;
- (m) “ownership” includes beneficial ownership;
- (n) “persons engaged by a small business” includes
 - (i) officers of the small business corporation,
 - (ii) persons who perform work or provide services under a contract with the small business other than
 - (A) work or services under a contract that relates to the provision of accounting, legal or other professional services on a temporary working or ad hoc consulting basis, or
 - (B) work or services that are only incidental to the main purpose of a contract for the purchase or hiring of equipment,

and

- (iii) persons who perform work or provide services for a small business or at its place of business who were engaged or employed through a temporary help service;
- (o) “small business” means a corporation that has no more than 100 employees calculated in the prescribed manner;
- (p) “spouse” of a person means
 - (i) the person to whom the person is married, or
 - (ii) the person’s adult interdependent partner;
- (q) “subsidiary”, in respect of another corporation, means a corporation that is controlled by that other corporation;
- (r) “venture capital corporation” means a corporation registered under Division 1.

(2) In a determination under this Part as to whether a corporation is controlled by one or more persons, the relevant facts, including the existence of any option, warrant or right described in subsection (7)(b), must be taken into account.

(3) Without limiting subsection (2), a corporation is controlled by a person or a common interest group if

- (a) shares of the corporation carrying more than 50% of the voting rights for the election of the directors are held by or for the benefit of that person or common interest group, and
- (b) the voting rights carried by the shares referred to in clause (a) are sufficient, if exercised, to elect a majority of the directors of the corporation.

(4) For the purposes of this Part, shares are deemed to be held for the benefit of an individual if they are beneficially owned by a corporation controlled by the individual or by an affiliate of that corporation.

(5) For the purposes of this Part, a corporation is deemed to own shares that are owned by its affiliates.

(6) The annuitant of a trust governed by

- (a) a registered retirement savings plan, or
- (b) a registered retirement income fund

as defined in the federal Act is deemed to have purchased, held or disposed of shares that are purchased, held or disposed of by the trust.

(7) For the purposes of this Part except the definition of “affiliate” in subsection (1)(a), in calculating the total number of shares of a corporation that are owned or controlled,

- (a) if a share carries the right to more than one vote, each vote carried by the share is deemed to be a share, and
- (b) there must be included in the total number of shares any share that would be issued or transferred following the exercise of
 - (i) an option, warrant or right, and
 - (ii) a conversion right that is attached to a debt obligation or to a share of the corporation.

(8) For the purposes of this Part, 2 or more persons holding the same shares or holding shares jointly are to be counted as one shareholder.

(9) For the purposes of the holding of an investment referred to in sections 13 to 15, a small business does not cease to be a small business by reason only that, while the investment is held, the number of employees of the small business and its affiliates is more than 100 employees calculated in the prescribed manner.

(10) A reference in this Part to a series of transactions or events includes any related transactions or events completed in contemplation of the series.

(11) Any calculation or determination under this Part may be based on projections that the Minister considers to be reasonable.

(12) Subject to the regulations, a reference in this section to a corporation includes a cooperative.

Division 1 Venture Capital Corporation Tax Credits

Registration as venture capital corporation

3(1) A corporation may apply to the Minister to be registered as a venture capital corporation.

(2) An application must be

- (a) in a form approved by the Minister and accompanied with the information required on the form, and
 - (b) signed by one director and one officer of the corporation.
- (3) The Minister shall register the corporation if the Minister is satisfied that the applicant meets the requirements set out in section 4.

Requirements for registration

4 The requirements for registration of a corporation as a venture capital corporation under section 3 are as follows:

- (a) the corporation must be incorporated or continued under the *Business Corporations Act*;
- (b) the corporation must not have previously carried on business;
- (c) the corporation must have equity capital of at least \$25 000;
- (d) the corporation must have a share structure consisting of only either or both of the following:
 - (i) common shares having no special rights or restrictions;
 - (ii) common shares having special rights relating only to the redemption of the shares by the corporation;
- (e) the corporation must have articles that restrict the business of the corporation to assisting development of small businesses by
 - (i) making investments permitted by this Division, and
 - (ii) providing business and managerial expertise to small businesses in which it has made or proposes to make an eligible investment;
- (f) the corporation must meet any other prescribed requirements for registration.

Certificate of registration

5 On registration of a venture capital corporation, the Minister must issue a certificate of registration and record on the certificate the date of registration.

Register of venture capital corporations

- 6(1)** The Minister must maintain a register of venture capital corporations.
- (2)** The Minister must publish the register by posting the register on a publicly accessible website.
- (3)** The register must contain the following information in respect of each venture capital corporation:
- (a) the name of the venture capital corporation;
 - (b) the date it was registered under this Part;
 - (c) the location of its registered office;
 - (d) any other prescribed information.

Permanent establishment

- 7(1)** In this section, “permanent establishment” has the same meaning as in the federal Act.
- (2)** A venture capital corporation must establish a permanent establishment in Canada within 30 days after being registered and must afterward maintain a permanent establishment in Canada.

Restrictions on business and authorized equity capital

- 8(1)** A venture capital corporation must not carry on any type of activity other than
- (a) making investments permitted under section 19, and
 - (b) providing business and managerial expertise to small businesses in which it has made or proposes to make an eligible investment.
- (2)** No act of a venture capital corporation, including the transfer of property by or to it, is invalid merely because the act contravenes subsection (1).
- (3)** The equity capital of a venture capital corporation, including the equity capital referred to in section 11, may be limited to prescribed maximum amounts.

**Restrictions on purchase of shares
and share certificates**

9(1) All issued shares of a venture capital corporation must be fully paid for in cash and must not be used for security for any loan.

(2) All share certificates of a venture capital corporation must conspicuously state the following on their face:

“The value of these shares may be significantly affected by the revocation provisions in section 21 and the repayment provisions in section 22 of the *Investing in a Diversified Alberta Economy Act*.”

(3) Without the written approval of the Minister, a venture capital corporation must not alter

- (a) its share structure, or
- (b) a provision of its articles respecting a matter referred to in section 4(e).

Minimum capital requirements

10(1) By the end of its first year after the date of registration under this Part and afterwards, a venture capital corporation must have equity capital of at least \$50 000.

(2) A venture capital corporation must

- (a) have a prescribed amount invested in eligible investments within the prescribed time limits, and
- (b) keep that amount in eligible investments for at least the prescribed period.

(3) A regulation made for the purposes of subsection (2) may prescribe different amounts, time limits and periods for different circumstances.

Equity capital issues

11 A venture capital corporation must apply to the Minister for approval to raise equity capital and the Minister may grant the approval subject to any conditions that the Minister may impose, including but not limited to

- (a) a condition that the shares may only be issued, as the Minister specifies, to corporations and individuals as defined in section 21(1),

- (b) a condition setting the maximum consideration for which those shares may be issued to those corporations and individuals, and
- (c) a condition that the equity capital be raised only for the purposes of investment in a small business referred to in section 12(1)(c) that is engaged in a prescribed business activity that is specified by the Minister in the condition.

Investment in small business

12(1) A venture capital corporation may make an investment in a small business if the following criteria are met:

- (a) subject to subsection (2), the small business, together with its affiliates, has no more than 100 employees calculated in the prescribed manner;
- (b) at least the prescribed percentage of the wages and salaries, determined in the prescribed manner, of the small business is or will be paid to employees who regularly report to work at operations located in Alberta;
- (c) the small business, if required by a condition of the Minister, is or will be substantially engaged, as determined in the prescribed manner, in Alberta in a prescribed business activity that is specified by the Minister in the condition;
- (d) the investment consists or will consist of
 - (i) the direct acquisition from the small business of equity shares issued for the purpose of raising new equity capital,
 - (ii) the acquisition of equity shares issued by the small business in prescribed circumstances under a prospectus, offering memorandum or other disclosure document,
 - (iii) the direct acquisition from an affiliate of the small business of equity shares of the affiliate, or
 - (iv) the acquisition of prescribed limited partnership units;
- (e) the funds paid by the venture capital corporation
 - (i) for any equity shares referred to in clause (d)(iii) are in turn invested in equity shares of the small business by the affiliate within the time limits provided for in section 10(2), or

- (ii) for any limited partnership units referred to in clause (d)(iv) are in turn invested in equity shares in one or more small businesses by the limited partnership within the time limits provided for in section 10(2);

- (f) the investment is not prohibited under sections 13 to 16.

(2) Subsection (1)(a) does not apply in respect of a small business in which a venture capital corporation previously invested at a time when the small business had fewer than 100 employees calculated in the prescribed manner.

(3) Despite subsection (1)(a), if

- (a) a small business and another corporation are affiliates only because one of them is controlled by one person and the other by one or more persons described in section 2(1)(c)(iv) or (v), and
- (b) the Minister is satisfied that the small business and the other corporation do not have any agreement, commitment or understanding to conduct, in concert, any business,

then, in calculating the number of employees under subsection (1)(a), the Minister must not count the employees of the affiliate of the small business.

(4) A regulation made for the purposes of subsection (1)(b) or (c) may provide differently for different business activities.

Investment for certain purposes prohibited

13(1) Subject to subsection (3), a venture capital corporation must not make or hold an investment in a small business if all or part of the proceeds of that investment are directly or indirectly used or intended to be used by the small business for any of the following purposes:

- (a) lending;
- (b) investment outside Alberta;
- (c) investment in land, unless the investment is incidental or ancillary to the business activities, prescribed for the purposes of section 12(1)(c), of the small business;
- (d) acquiring securities, other than the acquisition of equity shares of an affiliate of the small business or units of a prescribed limited partnership that complies with the criteria set out in section 12(1)(d)(iii) or (iv);

- (e) purchasing goods or services from
 - (i) the venture capital corporation,
 - (ii) a director, officer or shareholder of the venture capital corporation, or
 - (iii) an associate of a director, officer or shareholder of the venture capital corporation,

other than
 - (iv) services of the type described in section 4(e)(ii) that are purchased at fair market value by the small business, or
 - (v) goods or services that are sold at fair market value to the small business in the ordinary course of the seller's business as a seller of such goods or services on the open market;
- (f) payment of all or part of a debt obligation, unless
 - (i) the Minister considers that the payment is necessary for the financial viability of the small business, or
 - (ii) the debt obligation was incurred with the prior written approval of the Minister in anticipation of an investment in the small business by the venture capital corporation;
- (g) as part of a transaction or series of transactions directly or indirectly involving any of the following:
 - (i) the purchase or redemption of previously issued shares of the small business or one of its affiliates;
 - (ii) the retirement of any part of a liability to a shareholder of the small business or one of its affiliates or of a liability to a shareholder's associate or affiliate;
 - (iii) the payment of dividends;
 - (iv) except in prescribed circumstances, the funding of all or part of the purchase by the small business of all or a substantial portion of the assets of a proprietorship, partnership, joint venture, trust or corporation;
 - (v) the funding of all or part of the purchase by the small business of any of the assets of a proprietorship, partnership, joint venture, trust or corporation at a price

that is greater than the fair market value of the assets purchased;

(vi) other prescribed events;

(h) other prescribed purposes.

(2) If a small business issues equity shares to a venture capital corporation in payment of all or part of a debt obligation that is the subject of an approval under subsection (1)(f)(ii), the original principal amount of all or part, as the case may be, of the debt obligation must, for the purposes of section 2(1)(j), be treated as if it were money received by the small business.

(3) Subsection (1) does not prohibit a venture capital corporation from making or holding an investment in a small business if the funds invested by the venture capital corporation were raised other than through the issue of equity capital approved by the Minister under section 11.

Control of small business — prohibitions

14(1) Subject to subsection (2), a venture capital corporation must not make or hold an investment in a small business if it and any other venture capital corporation or corporations, either alone or in conjunction with one or more of their

- (a) associates or affiliates,
- (b) shareholders or their associates or affiliates,
- (c) directors or their associates, or
- (d) officers or their associates,

would own, directly or indirectly, shares carrying 50% or more of the voting rights for the election of directors of the small business or would, in any manner, control the small business.

(2) If the Minister considers that a small business in which a venture capital corporation has made an eligible investment is in financial difficulty, the Minister may by order authorize the venture capital corporation to temporarily control the small business under the circumstances and on the terms and conditions that the Minister determines.

Non-arm's length investment prohibited

15(1) A venture capital corporation must not make or hold an investment in a small business if any of the shares of the venture

capital corporation are held by a major shareholder who is, or was at any time during the 2 years immediately preceding the investment, any of the following:

- (a) a major shareholder of the small business;
- (b) an associate of a major shareholder of the small business;
- (c) a voting trust for which the trustee votes shares of the small business;
- (d) the small business or an associate or affiliate of the small business.

(2) A venture capital corporation must not make or hold an investment in a small business if the small business or an associate, affiliate, director, officer or shareholder of the small business provides or has provided, directly or indirectly, as part of any transaction or series of transactions, a loan, guarantee or any other financial assistance to any of the following:

- (a) the venture capital corporation;
- (b) an associate or affiliate of the venture capital corporation;
- (c) a director, officer or shareholder of the venture capital corporation;
- (d) a member of any common interest group in respect of the venture capital corporation;
- (e) another person, for the purpose of that person making an investment in the venture capital corporation.

Aggregate investment by venture capital corporation

16(1) A venture capital corporation must not make an investment in a small business if, as a result of that investment, the aggregate of all amounts received by that small business and any affiliates of that small business

- (a) from the venture capital corporation, directly or indirectly, would be greater than the prescribed amount, or
- (b) from the venture capital corporation and any other venture capital corporation or corporations, directly or indirectly, would be greater than the prescribed amount for the prescribed period.

(2) For the purposes of subsection (1), if the Minister determines that one of the reasons for the separate existence of 2 or more small

businesses is to increase the amount received from one or more venture capital corporations, the small businesses are deemed to be one small business.

(3) If the Minister makes a determination under subsection (2), the Minister must give notice of that determination to the venture capital corporations that have invested in the small businesses.

Action to be taken if investment becomes prohibited

17(1) If an investment of a venture capital corporation becomes prohibited under sections 13 to 16, the venture capital corporation must dispose of that investment within 6 months after the investment becomes prohibited unless, within the 6-month period, the circumstances that caused the investment to be prohibited change so that it is no longer prohibited under any of those sections.

(2) If the Minister is satisfied that non-compliance with a provision of sections 13 to 16 by the venture capital corporation occurred even though its officers and directors exercised the degree of care, diligence and skill to ensure compliance with sections 13 to 16 that a reasonably prudent person would have exercised in comparable circumstances, the Minister may by order, with or without conditions, relieve the venture capital corporation from the consequences of the non-compliance for a period the Minister considers appropriate.

Changes in eligibility

18(1) If a small business in which a venture capital corporation has made an eligible investment ceases to conform with section 12(1)(b) or (c), the venture capital corporation must dispose of the investment within 6 months after the small business ceases to conform with section 12(1)(b) or (c).

(2) Subsection (1) does not apply if, within the 6-month period referred to in subsection (1), the circumstances that caused the non-conformance with section 12(1)(b) or (c) change so that the small business again conforms with section 12(1)(b) or (c).

(3) The Minister may by order

- (a) relieve a venture capital corporation from the requirement under subsection (1) to dispose of the investment to which subsection (1) applies, or
- (b) extend the period within which the disposition must be made for an additional period not exceeding 6 months,

if the Minister is satisfied that

- (c) the prescribed requirements, if any, are met,
- (d) the small business's non-conformance with section 12(1)(b) or (c) was not imminent at the time the venture capital corporation made the investment, and
- (e) the small business did not use any of the investment proceeds it received for any purposes set out in section 13 before ceasing to conform with section 12(1)(b) or (c).

Permitted investments and authorized expenses

19(1) A venture capital corporation must not make any investments other than investments in the following:

- (a) subject to a condition of the Minister under section 11(c), eligible investments;
- (b) money on deposit in Alberta at a treasury branch, credit union or member of the Canada Deposit Insurance Corporation or any other prescribed deposit insurance or guarantee plan;
- (c) a security, as defined in the *Securities Act*, of a small business the equity shares of which would qualify as an eligible investment;
- (d) the investment protection account under section 20;
- (e) any other prescribed investment.

(2) The annual expenses of a venture capital corporation must not be greater than a prescribed amount, determined in the prescribed manner.

(3) The amount prescribed for the purposes of subsection (2) and the manner prescribed for determining it may be different for venture capital corporations with different amounts of issued equity capital.

Investment protection account

20(1) A venture capital corporation must pay an amount of money equal to 30% of all amounts received by it as equity capital into an investment protection account that meets criteria and complies with conditions established by the Minister.

(2) Subsection (1) does not apply if money that would otherwise be required to be paid into the investment protection account will, in the opinion of the Minister, be used to acquire an eligible investment.

(3) If the Minister is satisfied that

- (a) a venture capital corporation has made an eligible investment or will use the money immediately to make an eligible investment, and
- (b) the sum of
 - (i) the amount to be paid out of the investment protection account,
 - (ii) any amounts previously paid out of the investment protection account, and
 - (iii) any money described in subsection (2) that has been previously used to acquire an eligible investment

is equal to or less than 37.5% of the venture capital corporation's aggregate eligible investments,

the Minister must, subject to subsection (8), authorize payment out of the investment protection account to the venture capital corporation in accordance with subsection (4).

(4) The amount to be paid under subsection (3) is the lesser of

- (a) 37.5% of the purchase price paid or to be paid for the eligible investment, and
- (b) the total amount in the account.

(5) If

- (a) the Minister determines that money is payable to the Finance Minister under section 22, and
- (b) there is sufficient money in the investment protection account to pay all or part of the amount payable,

the venture capital corporation must pay the money to the Finance Minister.

(6) Interest earned on money in the investment protection account is payable to the venture capital corporation.

- (7) Despite subsection (6), if
- (a) the registration of a venture capital corporation is revoked under section 27, or
 - (b) a venture capital corporation fails to comply with section 10(1) and (2),

the venture capital corporation must pay to the Finance Minister all income earned in respect of the investment protection account between the time the account was opened and the time of revocation or the time at which the period referred to in section 10(2) expires.

(8) The Minister may refuse to authorize a payment under subsection (3) if the Minister considers that the venture capital corporation is contravening or has contravened this Act or the regulations.

(9) If a venture capital corporation acquires one or more of its own shares and the Minister is satisfied that no investor tax credits under section 25.01 of the *Alberta Corporate Tax Act* or section 35.01 of the *Alberta Personal Income Tax Act* have been or will be claimed in respect of those shares, the Minister may authorize an amount calculated in the prescribed manner to be paid out of the investment protection account to the venture capital corporation.

Tax credit certificates

21(1) In this section,

- (a) “corporation” means a corporation to which section 5 of the *Alberta Corporate Tax Act* applies;
- (b) “individual” means an individual as defined in section 35.01 of the *Alberta Personal Income Tax Act*.

(2) A venture capital corporation must apply to the Minister on behalf of its shareholders that are corporations, in a form approved by the Minister, for a tax credit certificate entitling each of those shareholders to an investor tax credit under the *Alberta Corporate Tax Act* equal to 30% of the amount received by the venture capital corporation from each of those shareholders for those shares in the then-current calendar year.

(3) A venture capital corporation must apply to the Minister on behalf of its shareholders who are individuals, in a form approved by the Minister, for a tax credit certificate entitling each of those shareholders to an investor tax credit under the *Alberta Personal*

Income Tax Act equal to 30% of the amount received by the venture capital corporation from each of those shareholders for those shares in the then-current calendar year or, in the case of an individual who makes an election referred to in section 35.01 of the *Alberta Personal Income Tax Act*, in the first 60 days after the end of that calendar year.

(4) The Minister must issue a tax credit certificate in the amount referred to in subsection (2) to each of the shareholders referred to in subsection (2) if the Minister is satisfied as to all of the matters referred to in subsection (6).

(5) The Minister must issue a tax credit certificate in the amount referred to in subsection (3) to each of the shareholders referred to in subsection (3) if the Minister is satisfied as to all of the matters referred to in subsection (6).

(6) The following are the matters referred to in subsections (4) and (5):

- (a) the venture capital corporation is complying with this Act and the regulations;
- (b) the venture capital corporation has established and fully funded the investment protection account as required under section 20;
- (c) no tax credit certificate under this section has been previously issued in respect of those shares;
- (d) the equity capital that is the subject of the application for the tax credit certificate consists of equity capital of the venture capital corporation the raising of which has been approved in accordance with section 11;
- (e) the shareholder acquired the shares directly from the venture capital corporation or its agent acting in that behalf;
- (f) the shareholder, if an individual, was resident in Alberta on the date the shareholder subscribed for the shares;
- (g) any other prescribed conditions are met.

(7) If the Minister refuses to issue a tax credit certificate under this section, the Minister must give notice within 30 days of that refusal, together with reasons for the refusal, to the venture capital corporation.

(8) The Minister may revoke a tax credit certificate issued under this section if the Minister determines that, at the time the tax credit

certificate was issued or at a subsequent time, the venture capital corporation was in contravention of this Act or the regulations.

(9) If the Minister revokes a tax credit certificate issued under this section, the Minister must promptly give notice of that revocation, together with reasons for the revocation, to the venture capital corporation and to the Finance Minister.

Repayment of tax credit amount

22(1) If a venture capital corporation directly or indirectly acquires one or more of its own shares, the venture capital corporation must pay to the Finance Minister an amount of money calculated in accordance with subsection (2).

(2) If a venture capital corporation acquires one or more of its own shares for a total consideration that

- (a) is equal to or greater than that for which the share or shares were issued, the venture capital corporation must pay to the Finance Minister an amount of money equal to 30% of the consideration paid to the venture capital corporation by the shareholder for the share or shares at the time the share or shares were issued, or
- (b) is less than that for which the share or shares were issued, the venture capital corporation must pay to the Finance Minister an amount equal to 30% of the greater of
 - (i) the consideration paid by the venture capital corporation for the acquisition of the share or shares, and
 - (ii) the amount that the Minister considers was the fair market value of the share or shares at the time the share or shares were acquired, but the amount under this subclause must not be greater than the consideration that was paid to the venture capital corporation for the issue of that share or those shares.

(3) If a venture capital corporation

- (a) is deemed to have acquired a share under section 23, or
- (b) is deemed under section 25(e) to have acquired all of its shares at the time of an event referred to in section 25(a) to (d),

the venture capital corporation must pay to the Finance Minister an amount equal to 30% of the consideration paid to the venture

capital corporation in respect of the issue of that share or those shares.

- (4) If the Minister considers that a venture capital corporation has
- (a) conducted its business and affairs in a manner consistent with this Act, and
 - (b) incurred investment losses,

the Minister may by order reduce the amount that would otherwise be payable under subsection (3) in order to take the investment losses into account.

- (5) If the Minister considers that a venture capital corporation has conducted its business and affairs in a manner consistent with this Act and has held an eligible investment for at least 3 years, the Minister may by order reduce the amount that would otherwise be payable under subsection (3) by an amount calculated by

- (a) multiplying the amount otherwise payable by the number of days the venture capital corporation held the eligible investment, and
- (b) dividing the product obtained under clause (a) by 1825 to determine the amount of the reduction.

- (6) If a venture capital corporation has complied with section 10(2) throughout the period prescribed for the purpose of that section, no amount is payable under this section.

- (7) For the purposes of this section, a venture capital corporation is deemed to have acquired one of its own shares at the time the shareholder disposing of the share first received consideration from the venture capital corporation in relation to that disposition.

- (8) The amount to be paid to the Finance Minister under this section must not be greater than the aggregate amount of the tax credit certificates issued in respect of a venture capital corporation's own shares that are acquired or deemed under this section to be acquired by it.

Voluntary reductions in capital

23(1) For the purposes of section 22, a venture capital corporation is deemed to have acquired one of its own shares if, pursuant to the *Business Corporations Act*, it does any of the following:

- (a) cancels a share surrendered to the venture capital corporation by way of gift;

(b) reduces its stated capital;

(c) redeems its shares.

(2) Despite anything to the contrary in the *Business Corporations Act*, a resolution of a venture capital corporation to reduce its stated capital does not take effect until the venture capital corporation has paid the money payable by it to the Finance Minister under section 22.

Voluntary cancellation of registration

24(1) If a venture capital corporation does both of the following, the Minister must cancel the venture capital corporation's registration:

- (a) passes a special resolution requesting cancellation of its registration;
- (b) presents proof satisfactory to the Minister that it has complied with sections 20(5) and (7) and 22.

(2) On cancellation under subsection (1), the corporation may carry on business in accordance with the *Business Corporations Act*.

Repayment on revocation, dissolution, amalgamation or cancellation

25 If a venture capital corporation

- (a) has its registration revoked under section 27,
 - (b) is dissolved or has been ordered by a court to dissolve,
 - (c) without the prior written approval of the amalgamation from the Minister, with or without conditions, under section 9,
 - (i) enters into an amalgamation agreement, or
 - (ii) passes a resolution to approve an amalgamation,
- or
- (d) passes a resolution requesting cancellation under section 24,

the venture capital corporation

- (e) is deemed, only for the purposes of section 22(3), to have acquired all of its shares at the time the event referred to in clauses (a) to (d) occurs, and
- (f) must make payment to the Finance Minister as required by section 22(3).

Liability of third party

26(1) In this section, “third party” means

- (a) a director or officer of
 - (i) a venture capital corporation, or
 - (ii) a small business in which an investment under section 12 was made by a venture capital corporation,
 - (b) a member of a common interest group that controls
 - (i) a venture capital corporation, or
 - (ii) a small business described in clause (a)(ii),
- or
- (c) a major shareholder of
 - (i) a venture capital corporation, or
 - (ii) a small business described in clause (a)(ii).

(2) If a third party authorizes or acquiesces in

- (a) a transaction or event, or
- (b) a series of transactions or events,

that the third party knew or reasonably ought to have known at the time of the authorization or acquiescence would render a venture capital corporation liable to make the payment to the Finance Minister required under section 22, the third party is jointly and severally liable for the amount of the payment.

(3) If,

- (a) on the basis of information supplied by a director, officer or shareholder of a venture capital corporation, a tax credit certificate has been issued under section 21,
- (b) that information is false or misleading, and

- (c) the director, officer or shareholder knew, or ought to have known, that it was false or misleading,

the director, officer or shareholder who supplied the information is liable to pay to the Finance Minister the amount of the tax credit.

Revocation or suspension of registration

27(1) The Minister may suspend or revoke the registration of a venture capital corporation if

- (a) the Minister considers that the venture capital corporation
 - (i) is contravening or has contravened this Act or the regulations or a condition that the Minister imposes, makes or gives under this Act,
 - (ii) has misrepresented any information to the Minister, either knowingly or through circumstances amounting to negligence, or
 - (iii) obtained its registration fraudulently or by furnishing false or misleading information or documents,
- (b) the venture capital corporation fails to supply information, records or documents when they are required under this Act,
- (c) the venture capital corporation supplies information, records or documents referred to in clause (b) that contain false or misleading information, or
- (d) the venture capital corporation has no remaining eligible investments as required by section 10(2).

(2) If the Minister suspends a registration under subsection (1), the Minister may

- (a) impose conditions to be complied with by the suspended venture capital corporation during the period of suspension, and
- (b) reinstate the registration with or without conditions.

(3) Despite subsections (1) and (2), if the Minister considers that a venture capital corporation is conducting its business and affairs in a manner consistent with this Act, the Minister may do either or both of the following:

- (a) issue a tax credit certificate;

- (b) reduce the amount that would otherwise be required to be deposited into the investment protection account referred to in section 20.

Annual reporting

28 Within 6 months after its fiscal year end, a venture capital corporation must prepare and file with the Minister a return setting out prescribed information.

Division 2 Community Economic Development Corporation Tax Credits

Registration as community economic development corporation

29(1) A corporation or cooperative may apply to the Minister to be registered as a community economic development corporation.

(2) An application must be

- (a) in a form approved by the Minister and accompanied with the information required on the form, including a copy of a community economic development plan containing the prescribed information, and
- (b) signed by one director and one officer of the corporation or cooperative.

(3) The Minister may register the corporation or cooperative if the Minister is satisfied that the applicant meets the requirements set out in section 30.

Requirements for registration

30 The requirements for registration of a corporation or cooperative as a community economic development corporation under section 29 are as follows:

- (a) in the case of a corporation,
 - (i) the corporation must be incorporated or continued under the *Business Corporations Act*, and
 - (ii) the corporation must have authorized capital consisting of at least one class of voting equity shares;
- (b) the corporation or cooperative must have assets or revenue of less than the prescribed amount, including the assets and revenues of its affiliates;

- (c) in the case of a cooperative, the cooperative must carry on business or operations in a prescribed activity or must have articles that restrict the cooperative to investing in eligible investments of a cooperative that carries on business or operations in a prescribed activity;
- (d) the corporation or cooperative must meet any other prescribed requirements for registration.

2016 cI-10.5 s30;2018 c8 Sched. 2 s3

Certificate of registration

31 On registration of a corporation or cooperative as a community economic development corporation, the Minister must issue a certificate of registration and record on the certificate the date of registration.

Application of sections 6 to 28

32 Sections 6 to 28 apply, with modifications set out in the regulations, to a community economic development corporation.

(NOTE: Part 1, Division 2 proclaimed in force August 1, 2018.)

Division 3 Eligible Business Corporation Investor Tax Credits

Definitions

33 In this Division,

- (a) “additional equity capital” means additional equity capital raised by an eligible business corporation under an approval granted to it under section 37 by the Minister;
- (b) “eligible investor” means
 - (i) a corporation to which section 5 of the *Alberta Corporate Tax Act* applies, except a venture capital corporation or a community economic development corporation, or
 - (ii) an individual as defined in section 35.01 of the *Alberta Personal Income Tax Act*.

Registration as eligible business corporation

34(1) A small business may apply to the Minister to be registered as an eligible business corporation.

- (2) An application must be
- (a) in a form approved by the Minister and accompanied with the information required on the form, and
 - (b) signed by one director and one officer of the small business.
- (3) The Minister shall register the small business if the Minister is satisfied that the applicant meets the requirements set out in section 35.

Requirements for registration

35(1) The requirements for registration of a small business as an eligible business corporation under section 34 are as follows:

- (a) the small business, together with its affiliates, must have no more than 100 employees calculated in the prescribed manner;
 - (b) at least the prescribed percentage of the wages and salaries, determined in the prescribed manner, of the small business is or will be paid to employees who regularly report to work at operations located in Alberta;
 - (c) the small business, if required by a condition of the Minister, is or will be substantially engaged, as determined in the prescribed manner, in Alberta in a prescribed business activity that is specified by the Minister in the condition;
 - (d) the small business must have equity capital of at least \$25 000;
 - (e) the small business must meet any other prescribed requirements for registration.
- (2) A regulation made for the purposes of subsection (1)(b) or (c) may provide differently for different business activities.

Certificate of registration

36 On registration of a small business as an eligible business corporation, the Minister must issue a certificate of registration and record on the certificate the date of registration.

Additional equity capital

37(1) An eligible business corporation may apply to the Minister for approval to raise additional equity capital and the Minister may grant the approval, subject to subsection (2) and to any conditions

that the Minister may impose, if the Minister is satisfied that the capital will consist of equity shares that

- (a) do not carry rights and restrictions attached to the shares that
 - (i) create a debt between the holder or beneficial owner of the shares and any other person,
 - (ii) entitle the holder or beneficial owner of the shares to reduce the impact of any loss the holder or beneficial owner sustains in holding or disposing of the shares,
 - (iii) provide the holder or beneficial owner of the shares with the right to require the eligible business corporation to repurchase the shares before the expiry of 5 years after the date of issue, or
 - (iv) are prohibited by regulation,
- (b) do not carry, or have contingent rights to obtain, 50% or more of the voting rights for the election of directors of the eligible business corporation, and
- (c) are fully paid for in cash.

(2) It is a condition of an approval under subsection (1) to raise additional equity capital that the eligible business corporation must not issue any of the shares included in the additional equity capital to a person that, at any time during the 2 years immediately preceding the date of issue, has disposed of a share of any class of shares issued by the eligible business corporation.

(3) The Minister may, under subsection (1), impose a condition that the additional equity capital be raised only for the purposes of investment in a small business that is substantially engaged, determined in the prescribed manner, in Alberta in a prescribed business activity that is specified by the Minister in the condition.

Application for tax credit certificates

38(1) An eligible business corporation that in any calendar year has raised additional equity capital must apply to the Minister, in a form approved by the Minister, for a tax credit certificate entitling each eligible investor that is a corporation to an investor tax credit under the *Alberta Corporate Tax Act* equal to 30% of the amount received by the eligible business corporation in that calendar year for the shares that were part of the additional equity capital and issued to the eligible investor.

(2) An eligible business corporation that in any calendar year has raised additional equity capital must apply to the Minister, in a form approved by the Minister, for a tax credit certificate entitling each eligible investor who is an individual to an investor tax credit under the *Alberta Personal Income Tax Act* equal to 30% of the amount received by the eligible business corporation in that calendar year or, in the case of an individual who makes an election referred to in section 35.01 of the *Alberta Personal Income Tax Act*, within 60 days after the end of that calendar year, for the shares that were part of the additional equity capital and issued to the eligible investor.

(3) Where a small business that becomes an eligible business corporation in 2017 has issued equity shares to a person on or after April 14, 2016 and before January 1, 2017 that meet the requirements of section 37, the equity shares issued in that period are deemed for purposes of section 37 to have been additional equity capital raised in 2017.

Tax credit certificates

39(1) The Minister must issue a tax credit certificate in the amount referred to in section 38(1) to each of the eligible investors referred to in section 38(1) if the Minister is satisfied as to all of the matters referred to in subsection (3).

(2) The Minister must issue a tax credit certificate in the amount referred to in section 38(2) to each of the eligible investors referred to in section 38(2) if the Minister is satisfied as to all of the matters referred to in subsection (3).

(3) The following are the matters referred to in subsections (1) and (2):

- (a) the eligible business corporation and its eligible investors are complying with this Act and the regulations;
- (b) no tax credit certificate has been previously issued under this section in respect of those shares;
- (c) the equity capital that is the subject of the application for the tax credit consists of equity capital of the eligible business corporation that has been raised pursuant to an approval under section 37;
- (d) the eligible investor acquired the shares directly from the eligible business corporation or its agent acting in that behalf;

- (e) the eligible investor, if an individual, was resident in Alberta on the date the eligible investor subscribed for the shares;
- (f) any other prescribed conditions are met.

(4) If the Minister refuses to issue a tax credit certificate under this section, the Minister must give notice within 30 days of that refusal, together with reasons for the refusal, to the eligible business corporation.

(5) The Minister may revoke a tax credit certificate issued under this section if the Minister determines that, at the time the tax credit certificate was issued or at a subsequent time, the eligible business corporation was in contravention of this Act or the regulations.

(6) If the Minister revokes a tax credit certificate issued under this section, the Minister must promptly give notice of that revocation, together with reasons for the revocation, to the eligible business corporation and to the Finance Minister.

Aggregate investment by eligible investor

40(1) An eligible investor must not make or hold an investment in an eligible business corporation if, as a result of that investment, the aggregate of all amounts received by that eligible business corporation from all eligible investors, directly or indirectly, would be greater than the prescribed amount.

(2) For the purposes of subsection (1), if the Minister determines that one of the reasons for the separate existence of 2 or more eligible business corporations is to increase the amount received from one or more eligible investors, the eligible business corporations are deemed to be one eligible business corporation.

(3) If the Minister makes a determination under subsection (2), the Minister must give notice of that determination to the eligible business corporations.

Control of eligible business corporation

41(1) Subject to subsection (2), an eligible investor must not make or hold an investment in an eligible business corporation if the eligible investor, either alone or in conjunction with one or more of the eligible investor's

- (a) associates or affiliates,
- (b) shareholders or their associates or affiliates,
- (c) directors or their associates, or

- (d) officers or their associates,

would own, directly or indirectly, shares carrying 50% or more of the voting rights for the election of directors of the eligible business corporation or would, in any manner, control the eligible business corporation.

(2) If the Minister considers that an eligible business corporation in which an eligible investor has invested is in financial difficulty, the Minister may by order authorize the eligible investor to temporarily control the eligible business corporation, under circumstances and on terms and conditions that the Minister determines.

Revocation or suspension of registration

42(1) The Minister may suspend or revoke the registration of an eligible business corporation if

- (a) the Minister considers that the eligible business corporation
- (i) is contravening or has contravened this Act or the regulations or a condition that the Minister imposes, makes or gives under this Act,
 - (ii) has misrepresented any information to the Minister, either knowingly or through circumstances amounting to negligence, or
 - (iii) obtained its registration fraudulently or by furnishing false or misleading information or documents,
- (b) the eligible business corporation fails to supply information, records or documents when they are required under this Act,
- (c) the eligible business corporation supplies information, records or documents referred to in clause (b) that contain false or misleading information,
- (d) the eligible business corporation has applied any proceeds of additional equity capital for a use prohibited under section 48,
- (e) the eligible business corporation, at any time during the 5 years immediately following the date on which the eligible business corporation raises any additional equity capital, does not conform to section 35(1)(b) or (c), or

- (f) the eligible business corporation has not raised any additional equity capital within 2 years of the eligible business corporation's registration under section 34.
- (2)** If the Minister suspends a registration under subsection (1), the Minister may
- (a) impose conditions to be complied with by the suspended eligible business corporation during the period of suspension, and
 - (b) reinstate the registration with or without conditions.
- (3)** An eligible business corporation or an associate, affiliate, director, officer or shareholder of an eligible business corporation must not provide, directly or indirectly, as part of any transaction or series of transactions, a loan, loan guarantee or any other financial assistance to any person for the purpose of, or in connection with, a purchase of shares that are part of any additional equity capital.
- (4)** An eligible business corporation must not redeem a share for which a tax credit certificate has been issued under this Division unless the redemption occurs
- (a) more than 5 years after the date of issue of the share, or
 - (b) in prescribed circumstances.
- (5)** An eligible business corporation must not register a transfer of a share for which a tax credit certificate has been issued under this Division if the transferor of the share is
- (a) the original purchaser of the share,
 - (b) a trustee of a registered retirement savings plan or registered retirement income fund through which an individual or his or her spouse purchased the share, or
 - (c) a trustee of a tax-free savings account through which an individual or his or her spouse purchased the share.
- (6)** Subsection (5) does not apply to a transfer of a share if the transfer occurs
- (a) more than 5 years after the date of issue of the share, or
 - (b) in prescribed circumstances.

Consequences of revocation

43(1) If, under section 42, the Minister revokes the registration of an eligible business corporation after it has raised additional equity capital, the eligible business corporation must pay to the Finance Minister, subject to subsection (2), an amount equal to the aggregate of all the amounts of tax credit certificates issued under this Division for the additional equity capital.

(2) For the purpose of this section, the Lieutenant Governor in Council may specify an amount less than the amount described in subsection (1), in which case the small business must pay to the Finance Minister that lesser amount.

(3) If, under section 42, the Minister revokes the registration of an eligible business corporation before the eligible business corporation has raised additional equity capital, the Minister must not issue a tax credit certificate issued under this Division on or after the date of revocation.

Liability of third party

44(1) In this section, “third party” means

- (a) a director or officer of an eligible business corporation,
- (b) a member of a common interest group that controls an eligible business corporation, or
- (c) a major shareholder of an eligible business corporation.

(2) If a third party authorizes or acquiesces in

- (a) a transaction or event, or
- (b) a series of transactions or events

that the third party knew or reasonably ought to have known at the time of the authorization or acquiescence would render the eligible business corporation liable to make the payment to the Finance Minister required under section 43, the third party is jointly and severally liable for the amount of the payment.

Voluntary cancellation of registration

45(1) On the written request of an eligible business corporation, the Minister may cancel the eligible business corporation’s registration if

- (a) it pays to the Finance Minister the aggregate of all the amounts of tax credits issued in the immediately preceding 5

years for shares issued by it as part of raising additional equity capital, and

(b) it meets prescribed requirements.

(2) If the Minister considers that an eligible business corporation that makes a request under subsection (1)

(a) has conducted its business and affairs in a manner consistent with this Act, and

(b) for at least 3 years has complied with this Division in relation to all the shares for which tax credit certificates have been issued,

the Minister may reduce the amount that would otherwise be payable under subsection (1) by an amount calculated by

(c) multiplying the amount otherwise payable by the number of days during which the shares referred to in clause (b) remained outstanding, and

(d) dividing the product obtained under clause (c) by 1825 to determine the amount of the reduction.

(3) If the Minister considers that an eligible business corporation that makes a request under subsection (1)

(a) has conducted its business and affairs in a manner consistent with this Act, and

(b) has incurred investment losses,

the Minister may reduce the amount that would otherwise be payable under subsection (1) in order to take the investment losses into account.

Repayment of tax credit amount on early redemption, acquisition or cancellation of shares

46(1) Except in prescribed circumstances, if an eligible business corporation, within 5 years after it issues a share for which a tax credit certificate was issued under this Division, redeems, acquires or cancels the share, the eligible business corporation must pay to the Finance Minister an amount equal to the tax credit certificate.

(2) The Lieutenant Governor in Council may make regulations requiring eligible business corporations who owe money payable to the Finance Minister under subsection (1) to pay interest on the money at a prescribed rate and calculated from a prescribed date.

(3) If the Minister considers that

- (a) an eligible business corporation referred to in subsection (1) has conducted its business and affairs in a manner consistent with this Act, and
- (b) the share issued by it referred to in subsection (1) was not redeemed, acquired or cancelled for at least 3 years,

the Minister may by order reduce the amount that would otherwise be payable under subsection (1) by an amount calculated by

- (c) multiplying the amount otherwise payable by the number of days during which the share referred to in clause (b) remained outstanding, and
- (d) dividing the product obtained under clause (c) by 1825 to determine the amount of the reduction.

(4) If the Minister considers that an eligible business corporation

- (a) has conducted its business and affairs in a manner consistent with this Act, and
- (b) has incurred investment losses,

the Minister may by order reduce the amount that would otherwise be payable under subsection (1) in order to take the investment losses into account.

**Repayment of tax credit amount —
other share dispositions**

47(1) If a person, within 5 years after the date of purchasing a share for which a tax credit certificate has been issued under this Division and in a transaction other than a redemption, acquisition or cancellation referred to in section 46, disposes of a share for which a tax credit certificate was issued under this Division, the person must pay to the Finance Minister an amount equal to the amount of the tax credit certificate.

(2) The Lieutenant Governor in Council may make regulations requiring persons who owe money payable to the Finance Minister under subsection (1) to pay interest on the money at a prescribed rate and calculated from a prescribed date.

Prohibited use of funds

48 An eligible business corporation must not use, directly or indirectly, any funds raised by an issue of shares for which tax

credits have been or are entitled to be claimed under tax credit certificates issued under this Division for any of the following purposes:

- (a) lending;
- (b) investment outside Alberta;
- (c) investment in land, unless the investment is incidental or ancillary to the business activities, referred to in section 35(1)(c), of the eligible business corporation;
- (d) acquiring securities, other than equity shares of an affiliate of the eligible business corporation that conforms to the criteria set out in section 35(1)(a) to (c);
- (e) purchasing goods or services from
 - (i) an eligible investor whose investment is in the eligible business corporation, or
 - (ii) an associate of an eligible investor whose investment is in the eligible business corporationother than goods or services that are sold at fair market value to the eligible business corporation in the ordinary course of the seller's business as a seller of such goods or services on the open market;
- (f) payment of all or part of a debt obligation, unless
 - (i) the Minister considers that the payment is necessary for the financial viability of the eligible business corporation, or
 - (ii) the debt obligation was incurred with the prior written approval of the Minister in anticipation of an investment in the eligible business corporation by an eligible investor;
- (g) as part of a transaction or series of transactions directly or indirectly involving any of the following:
 - (i) the purchase or redemption of previously issued shares of the eligible business corporation or one of its affiliates;
 - (ii) the retirement of any part of a liability to a shareholder of the eligible business corporation or one of its affiliates or of a liability to a shareholder's associate or affiliate;

- (iii) the payment of dividends;
 - (iv) except in prescribed circumstances, the funding of all or part of the purchase by the eligible business corporation of all or a substantial portion of the assets of a proprietorship, partnership, joint venture, trust or corporation;
 - (v) the funding of all or part of the purchase by the eligible business corporation of any of the assets of a proprietorship, partnership, joint venture, trust or corporation at a price that is greater than the fair market value of the assets purchased;
 - (vi) other prescribed transactions;
- (h) other prescribed purposes.

Annual reporting

49(1) Within 6 months after its fiscal year end, an eligible business corporation must prepare an annual report in a form approved by the Minister and file the report with the Minister accompanied with each of the following:

- (a) a copy of the securities register of the eligible business corporation;
- (b) a copy of the most recent financial statements of the eligible business corporation that have been reviewed by a chartered professional accountant or other person who is a licensed or registered member of an accounting association;
- (c) a copy of the most recent annual return filed with the Registrar of Corporations.

(2) An eligible business corporation must comply with subsection (1) in each of the 5 consecutive fiscal years following the date of its most recent issue of shares as part of the raising of additional equity capital.

Division 4 General

Definition

50 In this Division, “corporation” means a venture capital corporation, a community economic development corporation or an eligible business corporation.

Reconsideration of decision

51(1) A corporation that has received a notice

- (a) under section 21(7) or 39(4) that the Minister has refused to issue a tax credit certificate,
- (b) under section 21(9) or 39(6) that the Minister has revoked a tax credit certificate, or
- (c) under section 27 or 42 that the Minister has suspended or revoked the corporation's registration,

may, within 30 days after receiving the notice, request in writing that the Minister reconsider that decision and may, for that purpose, provide the grounds on which the request for reconsideration is made.

(2) On receipt of written representations pursuant to subsection (1), the Minister must reconsider the matter and may rescind, vary or confirm the previous decision.

(3) The Minister must notify the corporation in writing of the Minister's decision within 30 days after making the decision.

2016 cI-10.5 s51;2017 c22 s29

Refusal of further registrations and suspension of approvals

52(1) Despite anything to the contrary in this Act, the Minister may for any reason, including budgetary restrictions, refuse to accept the registration of further corporations under this Act for any period.

(2) During the period referred to in subsection (1), the Minister must not approve any further raising of equity capital under section 11 or the raising of additional equity capital under section 37.

Securities Act not affected

53 For greater certainty, nothing in this Act affects the operation of the *Securities Act* in relation to investing in a corporation.

Use of trust to acquire shares limited

54(1) If a person or an associate of a person directly or indirectly purchases or otherwise acquires shares in a corporation by use of a trust, other than a testamentary trust, for which a tax credit certificate is issued under section 21 or 39, the certificate is invalid.

(2) Subsection (1) does not apply if

- (a) the person is an annuitant,
- (b) the shares for which the tax credit certificate was issued were purchased or otherwise acquired by use of a tax-free savings account as described in section 146.2 of the federal Act, or
- (c) the Minister on application by a corporation grants an exemption.

Regulations

55(1) The Lieutenant Governor in Council may make regulations

- (a) prescribing any matter that is to be prescribed under this Part;
- (b) respecting the making of applications under this Part;
- (c) respecting the form and contents of applications under this Part;
- (d) prescribing the modifications considered necessary for applying sections 6 to 28 in respect of community economic development corporations;
- (e) respecting the rights and restrictions attached to equity shares for the purposes of section 37;
- (f) respecting reconsiderations of matters under section 51;
- (g) requiring any person to supply information or returns respecting any matter required in ensuring compliance with this Part;
- (h) establishing periods of time to be taken into account in calculations or determinations under this Part;
- (i) respecting the collection, use or disclosure of information, including personal information, for the purposes of this Part;
- (j) respecting the provisions for which a reference to a corporation includes a former corporation;
- (k) respecting the issuance, revocation or cancellation of tax credit certificates issued under this Part;
- (l) defining any word or expression used but not defined in this Part;

- (m) respecting forms for the purposes of this Part;
- (n) respecting the circumstances and manner of giving notices under this Part;
- (o) respecting any matter or thing the Lieutenant Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) A regulation made under this section may be made effective with respect to a period occurring before it is made.

Part 2

Capital Investment Tax Credits

Definitions and interpretation

56(1) In this Part,

- (a) “approved investment plan” means a proposed investment plan, including any modifications made to it by the Minister, in respect of which there is a subsisting conditional approval letter;
- (b) “available for use” means available for use as determined under
 - (i) subsection 13(27) of the federal Act, without reference to paragraph (c) of that subsection, or
 - (ii) subsection 13(28) of the federal Act, without reference to paragraph (d) of that subsection;
- (c) “conditional approval letter” means a conditional approval letter issued by the Minister under section 58(2);
- (d) “eligible corporation” means a corporation described in section 57;
- (e) “eligible qualified property” means property acquired or to be acquired by an eligible corporation after December 31, 2016, to be used and located in Alberta by the corporation primarily for
 - (i) manufacturing or processing goods for sale or lease that is qualified property as defined in subsections 127(9) and (11) of the federal Act, except that the requirement that the property has not been used, or acquired for use

or lease, for any purpose whatever before it was acquired by the eligible corporation does not apply, or

- (ii) providing or operating tourism infrastructure that, subject to the regulations, is property or in a class of property included in Schedule II of the *Income Tax Regulations* (Canada), except that any requirement that the property has not been used, or acquired for use, for any purpose whatever before it was acquired by the eligible corporation does not apply;
 - (f) “federal regulation” means a regulation, as amended from time to time, made under the federal Act;
 - (g) “government assistance” means government assistance as defined in subsection 127(9) of the federal Act, other than a capital investment tax credit that may be deducted or claimed pursuant to this Part and the *Alberta Corporate Tax Act*;
 - (h) “manufacturing or processing” means manufacturing or processing within the meaning of subsection 125.1(3) of the federal Act, and includes qualified activities as defined in the federal regulations made for the purposes of the definition of Canadian manufacturing and processing profits in subsection 125.1(3) of the federal Act;
 - (i) “proposed investment plan” means the list of properties an eligible corporation proposes to acquire for the purposes of this Part, the anticipated capital costs of those properties, and a description of the properties’ proposed use for manufacturing or processing goods for sale or lease, or providing or operating tourism infrastructure;
 - (j) “tourism infrastructure” means property used for the purpose of tourism activities in Alberta as prescribed.
- (2) In applying the definition of “qualified property” in subsection 127(9) of the federal Act for the purposes of subsection (1)(e)(i), that definition is to be read as if it did not include paragraph 127(9)(b.1) of the federal Act.

Eligible corporation

57 To be an eligible corporation, a corporation

- (a) must be incorporated, continued or registered under the *Business Corporations Act*,

- (b) must be involved in the business activities of manufacturing or processing goods for sale or lease, or providing or operating tourism infrastructure, and
- (c) must satisfy any conditions for eligibility set out in the regulations.

Conditional approval letter

58(1) An eligible corporation may apply to the Minister, in the form and manner required by the Minister, accompanied with the corporation's proposed investment plan, to be issued a conditional approval letter pursuant to subsection (2).

(2) Where the Minister is satisfied that

- (a) the corporation that has applied for a conditional approval letter pursuant to subsection (1) is an eligible corporation,
- (b) each item of property listed in the corporation's proposed investment plan in respect of which the application is made pursuant to subsection (1) is eligible qualified property and satisfies any conditions or requirements set out in the regulations,
- (c) the anticipated capital cost of the eligible qualified property in the corporation's proposed investment plan is equal to or exceeds the minimum amount prescribed under section 69(1)(j),
- (d) the corporation has submitted an economic impact assessment, including the information set out in subsection (3), in the form required by the Minister,
- (e) the corporation satisfies any other conditions or requirements that may be prescribed by the regulations, and
- (f) it is in the public interest to issue a conditional approval letter respecting the proposed investment plan,

the Minister may issue a conditional approval letter to the corporation approving the proposed investment plan, with or without modifications, specifying, in respect of each piece of eligible qualified property, the maximum amount, calculated in accordance with section 63, of the corporation's tax credit pursuant to this Part.

(3) The economic impact assessment referred to in subsection (2)(d) must describe the potential economic, social and

environmental impacts of the proposed investment plan, including the following information:

- (a) dollar value of the investment;
- (b) timeliness;
- (c) employment impacts;
- (d) inclusion of under-represented people or groups;
- (e) modernization or productivity improvements;
- (f) new product or service development;
- (g) supply chain impacts;
- (h) diversified customer base;
- (i) environmental performance;
- (j) community impact;
- (k) regional impact;
- (l) any other prescribed information.

(4) Repealed 2018 c8 Sched. 2 s8.

2016 cI-10.5 s58;2018 c8 Sched. 2 s8

Acquisition of eligible qualified property

59 Subject to section 76, eligible qualified property set out in an approved investment plan must be acquired within 2 years of the date of issuance of the conditional approval letter.

Report to Minister

60(1) In this section, “status of the approved investment plan” includes

- (a) the status of the acquisition of the eligible qualified properties listed in an eligible corporation’s approved investment plan, and
- (b) the status of what eligible qualified properties acquired by an eligible corporation listed in its approved investment plan are available for use.

(2) An eligible corporation that receives a conditional approval letter under section 58(2) must report to the Minister in the form and manner required by the Minister every 180 days after the date

of issuance of the conditional approval letter as to the status of the approved investment plan.

(3) The corporation must report any contravention of this Act by the corporation to the Minister within 30 days of the contravention.

(4) The corporation must report to the Minister any of the following changes respecting the corporation within 30 days of the occurrence of the changes:

- (a) an amalgamation as described in subsection 87(1) of the federal Act of corporations described in subsection 87(1.1) or (1.2) of the federal Act;
- (b) the dissolution of the corporation;
- (c) the winding-up of an eligible corporation that is a subsidiary if the rules in subsection 88(1) of the federal Act applied to the winding-up of the subsidiary;
- (d) any other prescribed change respecting the corporation,

and must report on the status of the approved investment plan at the time of the amalgamation, dissolution, winding-up or other prescribed change.

(5) The Minister may assign the conditional approval letter issued to an eligible corporation to another corporation following any of the events in subsection (4)(a) to (d) occurring in respect of the eligible corporation.

(6) In addition to reporting as required under subsections (2) to (4), the corporation must report to the Minister at the Minister's request as to the status of the approved investment plan.

Tax credit certificate

61(1) An eligible corporation may apply to the Minister for a tax credit certificate in the form and manner required by the Minister after the eligible qualified property in the approved investment plan has been acquired and is available for use for the activities set out in the approved investment plan.

(2) Where the Minister is satisfied that

- (a) a corporation that applies for a tax credit certificate pursuant to subsection (1) is an eligible corporation for the taxation year in respect of which the application is made,

- (b) each item of property set out in the approved investment plan in respect of which the application is made pursuant to subsection (1) is eligible qualified property,
- (c) the eligible qualified property in the approved investment plan in respect of which the application is made pursuant to subsection (1) was acquired by the corporation within 2 years of the date of issuance of the conditional approval letter under section 58(2) and is available for use by the corporation for the activities of manufacturing or processing goods for sale or lease, or providing or operating tourism infrastructure, set out in the approved investment plan, and
- (d) the corporation satisfies any other conditions or requirements prescribed by the regulations,

the Minister must issue a tax credit certificate to the corporation for the taxation year, specifying, in respect of each item of eligible qualified property, the amount, calculated in accordance with section 63, of the corporation's tax credit.

(3) If the Minister is not satisfied as to the matters in subsection (2)(b) to (d), the Minister may refuse to issue a tax credit certificate and must give notice to the corporation of the refusal and provide reasons for the Minister's decision.

Refusal of further applications

62 Despite anything to the contrary in this Part, the Minister may for any reason, including budgetary restrictions, refuse to accept further applications for conditional approval letters or tax credit certificates under this Part for any period.

Calculation of tax credit

63(1) Subject to subsections (2) and (3), the maximum amount of a corporation's tax credit is equal to 10% of the capital cost of each item of eligible qualified property acquired in respect of an approved investment plan.

(2) Subject to subsections (3) and (4), the amount of a tax credit under this Part for an item of eligible qualified property is to be calculated using the following formula:

(the lesser of A or B) multiplied by C

where

A is 10%,

- B is 30% minus the percentage of the capital cost of the property received by the corporation as government assistance, and
- C is the capital cost of the eligible qualified property.

(3) No tax credit certificate shall be issued and no tax credit shall be granted or claimed under this Part where the corporation has received government assistance in respect of the acquisition of the eligible qualified property in the amount of 30% or more of the capital cost of the property.

(4) The Minister may reduce the amount of the tax credit if the Minister considers that the requirements set out in section 61(2)(b) to (d) are only partially satisfied.

**Revocation of conditional approval letter
or tax credit certificate**

64(1) The Minister may revoke a conditional approval letter or a tax credit certificate issued under this Part if any information provided by the corporation to obtain the conditional approval letter or the tax credit certificate is false or misleading or fails to disclose a material fact.

(2) A conditional approval letter or a tax credit certificate issued under this Part may be revoked by the Minister if the Minister considers that, at the time the conditional approval letter or tax credit certificate was issued or at a subsequent time, the eligible corporation was in contravention of this Act or the regulations or a condition that the Minister imposed or made under this Act.

(3) A conditional approval letter or a tax credit certificate issued under this Part may be revoked by the Minister if items of eligible qualified property listed in the approved investment plan and acquired by an eligible corporation are not retained by the corporation in Alberta for one year after the date of issuance of the conditional approval letter or the tax credit certificate.

(4) A conditional approval letter or tax credit certificate revoked under this section is deemed never to have been issued.

Reconsideration by Minister

65(1) Where

- (a) the Minister

- (i) gives notice to a corporation pursuant to section 61(3) that the Minister has refused to issue a tax credit certificate, or
- (ii) revokes a conditional approval letter or a tax credit certificate under section 64,

or

- (b) a corporation disagrees with the amount of a tax credit specified in a tax credit certificate issued under section 61(2),

the corporation may, within 30 days after being notified of the Minister's decision under clause (a) or (b), request in writing that the Minister reconsider that decision and may, for that purpose, provide grounds on which the request for reconsideration is made.

(2) On receipt of written representations pursuant to subsection (1), the Minister must reconsider the matter and may rescind, vary or confirm the previous decision.

(3) The Minister must notify the corporation in writing of the Minister's decision within 30 days after making the decision to rescind, vary or confirm under subsection (2).

Renunciation of tax credit

66(1) A corporation may renounce its tax credit that would otherwise be claimable in a taxation year with respect to all eligible qualified property acquired by it in a taxation year by notifying the Minister in the form and manner required by the Minister on or before the earlier of

- (a) the date on which the corporation files its return of income for that taxation year, and
- (b) the date by which the corporation is required to file its return of income for that taxation year pursuant to section 36 of the *Alberta Corporate Tax Act*.

(2) Where a tax credit is renounced under subsection (1), the tax credit certificate relating to that tax credit is deemed never to have been issued.

Repayment on revocation

67 If

- (a) an eligible corporation deducts a tax credit granted under this Part and specified in the tax credit certificate referred to

in clause (b) from its tax payable under Part 5 of the *Alberta Corporate Tax Act*, and

- (b) the Minister revokes the tax credit certificate relating to that tax credit,

the corporation must pay to the Finance Minister the amount of the tax credit.

Liability for repayment of tax credit

68(1) If a director or an officer of an eligible corporation authorizes or acquiesces in

- (a) a transaction or event, or
- (b) a series of transactions or events,

that the director or officer knew or reasonably ought to have known at the time of the authorization or acquiescence would render the eligible corporation liable to make the payment to the Finance Minister required under section 67, the director or officer is jointly and severally liable for the amount of the payment.

(2) If

- (a) on the basis of information supplied by a director or officer of an eligible corporation, a tax credit certificate has been issued under section 61,
- (b) that information is false or misleading,
- (c) the director or officer knew, or ought to have known, that it was false or misleading, and
- (d) the corporation deducts a capital investment tax credit granted under this Part and specified in the tax credit certificate referred to in clause (a) from its tax payable under Part 5 of the *Alberta Corporate Tax Act*,

the director or officer who supplied the information is liable to pay to the Finance Minister the amount of the tax credit.

Regulations

69(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the conditions that must be satisfied for a proposed investment plan to be eligible to be approved as an approved investment plan;

- (b) respecting the conditions that must be satisfied for property to be eligible qualified property;
- (c) respecting property that is used to provide or operate tourism infrastructure;
- (d) respecting the conditions that must be satisfied for a corporation to be an eligible corporation;
- (e) respecting the process for applying for a conditional approval letter under this Part;
- (f) respecting the evaluation of applications for conditional approval letters;
- (g) respecting any matter relating to the selection of a proposed investment plan to be approved as an approved investment plan;
- (h) respecting the process for applying for a tax credit certificate under this Part;
- (i) respecting the issuance, revocation or cancellation of tax credit certificates issued under this Part;
- (j) respecting the minimum amount of the anticipated capital cost of the eligible qualified properties in an approved investment plan for an eligible corporation to be granted a tax credit;
- (k) respecting the maximum amount of a tax credit;
- (l) requiring a corporation to supply information or documents respecting any matter required in assessing eligibility and compliance with this Part;
- (m) respecting the criteria for determining whether eligible qualified property is acquired in respect of an approved investment plan;
- (n) respecting any conditions or requirements to be satisfied under section 58(2)(e) or 61(2)(d);
- (o) respecting information to be provided for the purposes of section 58(3)(l);
- (p) respecting reconsiderations of matters under section 65;
- (q) defining any word or expression used but not defined in this Part;

- (r) restricting or broadening the definitions of any word or expression defined in this Part;
 - (s) respecting the collection, use or disclosure of information, including personal information, for the purposes of this Part;
 - (t) respecting the circumstances and manner of giving notices and providing notifications under this Part;
 - (u) prescribing any matter that is to be prescribed under this Part;
 - (v) respecting any matter or thing the Lieutenant Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Part.
- (2) A regulation made under this section may be made effective with respect to a period occurring before it is made.

Part 3

General Matters

Definitions

70 In this Part,

- (a) “corporation” means
 - (i) a venture capital corporation, a community economic development corporation or an eligible business corporation under Part 1, or
 - (ii) an eligible corporation under Part 2;
- (b) “investigator” means a person appointed by the Minister under section 72 to conduct an investigation.

Examination of records, documents and things

71(1) For the purposes of determining whether a corporation is complying with this Act and the regulations, the Minister may appoint a person to examine the records, documents and things of that corporation.

(2) At the request of the person appointed under subsection (1), the corporation, or any other person in possession of records, documents or things of the corporation, must provide him or her with those records, documents and things, including electronic records and documents.

- (3)** An officer or employee of the corporation must
- (a) co-operate with and give all reasonable assistance to the person appointed under subsection (1) for the purpose of enabling that person to conduct the examination satisfactorily, and
 - (b) answer questions pertaining to the records, documents and things and provide other assistance that the person requests.
- (4)** Without limiting the generality of subsections (1) and (2), the person conducting an examination under this section
- (a) is entitled to unrestricted access, without charge, to all records, documents and things related to the enforcement of this Act, and
 - (b) may make copies of any records, documents or things to which he or she is entitled to unrestricted access.

Investigation

- 72(1)** The Minister may by order
- (a) appoint a person as an investigator to make whatever investigation the Minister considers appropriate for the administration of this Act, and
 - (b) determine the scope of the investigation.
- (2)** On the application of the Minister or the 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), a 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, documents or things and to inspect or examine them, and
 - (c) on giving a receipt, to remove any records, documents or things inspected or examined under clause (b) for the purpose of further inspecting or examining them and making copies of them.
- (3)** Unless the justice otherwise directs, an application for an order under subsection (2) may be

(a) made without notice to any other person, and

(b) heard in private.

(4) In subsections (2) and (3), “justice” means a justice of the peace or a judge of the Provincial Court.

(5) An inspection or examination under subsection (2) must be completed as soon as practical and the records, documents or things must be promptly returned to the person who produced them.

(6) A person must not withhold, destroy, conceal or refuse to give any information or produce any record, document or thing reasonably required under this section by the investigator.

Powers of investigators

73(1) An investigator has the same power as is vested in the Court of Queen’s Bench for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or otherwise, and

(c) to compel witnesses to produce records, documents and things.

(2) The failure or refusal of a person summoned as a witness under subsection (1) to attend, to answer questions or to produce records, documents or things that are in that person’s custody or possession makes that person, on application to the Court of Queen’s Bench by the investigator, liable to be committed for contempt by the Court of Queen’s Bench in the same manner as if that person were in breach of an order or judgment of that Court.

(3) Section 41 of the *Alberta Evidence Act* does not exempt a bank, as defined in that section, or any officer or employee of a bank from the operation of this section.

Appointment of experts

74(1) If the Minister appoints an investigator under section 72, the Minister may appoint persons having special technical or other knowledge or skills to assist and be responsible to the investigator.

(2) A person appointed under subsection (1) must

(a) examine records, documents and things of the person or corporation whose affairs are being investigated, and

- (b) perform other duties,
- as required by the investigator.

Investigator's report to Minister

75 An investigator must provide the Minister with

- (a) a full and complete report of the investigation, including all transcripts of evidence and material in the investigator's possession relating to the investigation, and
- (b) interim reports as requested by the Minister.

Extension of time

76 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 even if the time limit to be extended has expired.

Offences

77(1) A person who does any of the following commits an offence:

- (a) makes a statement in any record, evidence or information submitted or given under this Act or the regulations to the Minister, to a person working for or under the Minister or to an investigator that, at the time and in the circumstances under which the statement is made, is false or misleading with respect to a material fact or omits a material fact the omission of which makes the statement false or misleading;
- (b) makes a statement in an application, report, return or other record required to be filed or furnished under this Act or the regulations that, at the time and in the circumstances under which the statement is made, is false or misleading with respect to a material fact or omits to state a material fact the omission of which makes the statement false or misleading;
- (c) withholds, destroys or conceals a record, document or thing referred to in section 71(2) after it has been requested by a person conducting an examination under that section;
- (d) contravenes section 71(3);
- (e) impedes an investigator from entering premises under section 72(2)(a);

(f) contravenes section 72(6).

(2) If a corporation commits an offence under subsection (1), the corporation is liable to a fine of not more than \$100 000.

(3) If a corporation commits an offence under subsection (1), every director or officer of the corporation who authorized, permitted or acquiesced in the offence also commits an offence.

(4) If an individual commits an offence under subsection (1) or (3), he or she is liable to a fine of not more than \$50 000 or to imprisonment for a term of not more than one year, or to both the fine and imprisonment.

(5) A person does not commit an offence under this section in relation to a statement 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.

Limitation on prosecution

78 No prosecution for a contravention of this Act is to be commenced more than 2 years from the date the facts on which the alleged contravention is based first come to the knowledge of the Minister.

Collection and sharing of information

79(1) The Minister may collect information, including personal information, directly or indirectly, for the purposes of this Act.

(2) The Minister may share information collected under this Act with the Finance Minister for purposes of administering the *Alberta Corporate Tax Act* and the *Alberta Personal Income Tax Act*.

Debt due to Government

80 An amount payable under this Act is a debt due to the Government.

Part 4 Consequential Amendments and Coming into Force

81, 82 *(These sections amend other Acts; the amendments have been incorporated into those Acts.)*

Coming into force

83(1) This Act, except Division 2 of Part 1, comes into force on January 1, 2017.

(2) Division 2 of Part 1 comes into force on Proclamation.