



Province of Alberta

INVESTING IN A DIVERSIFIED
ALBERTA ECONOMY ACT

**COMMUNITY ECONOMIC
DEVELOPMENT CORPORATION
TAX CREDITS REGULATION**

Alberta Regulation 113/2018

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ALBERTA REGULATION 113/2018

Investing in a Diversified Alberta Economy Act

**COMMUNITY ECONOMIC DEVELOPMENT
CORPORATION TAX CREDITS REGULATION**

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Schedule

Interpretation

1(1) In this Regulation,

- (a) “Act” means the *Investing in a Diversified Alberta Economy Act*;
- (b) “common interest group”, in relation to a corporation, means 2 or more persons, whether or not associated or affiliated, who, pursuant to an agreement, commitment or understanding, exercise, or intend to exercise, in concert, any rights attached to or associated with their shares other than membership shares;
- (c) “defined community” means a group of individuals that may be reasonably distinguished by common geographic or economic characteristics;
- (d) “ECB investment program” means an investment by a community economic development corporation in an eligible community business for which the eligible shareholders of the community economic development corporation are entitled to a tax credit certificate under section 21 of the Act;

- (e) “eligible community business” means a corporation or cooperative that has no more than 100 employees calculated in accordance with section 12(4) of the Act;
- (f) “eligible shareholder” means a shareholder of a community economic development corporation to whom a tax credit certificate is issued;
- (g) “secured loan” means a loan by a community economic development corporation to an eligible community business
 - (i) in respect of which the collateral security for the loan is considered to secure repayment of the loan, and
 - (ii) the terms of which authorize the community economic development corporation to demand repayment of the loan or to assign the loan to another person where the loan becomes prohibited under section 17 of the Act;
- (h) “share” includes an investment share issued by a cooperative;
- (i) “shareholder” includes an investment shareholder as defined in the *Cooperatives Act*.

(2) A reference in sections 5 to 7 of this Regulation to sections 6 to 28 of the Act is a reference to one or more of those sections of the Act as modified and set out in the Schedule.

Voting restrictions

2(1) A shareholder of a community economic development corporation that is a corporation who is receiving, or is proposed to receive, any fees or remuneration from the community economic development corporation or whose associate or affiliate is receiving, or is proposed to receive, any fees or remuneration from the community economic development corporation is not entitled to vote in person or by proxy at a general meeting in respect of an ordinary resolution to approve or ratify the payment of any fees or remuneration by the community economic development corporation.

(2) Neither

- (a) a member, nor
- (b) a shareholder who has voting rights

of a community economic development corporation that is a cooperative who is receiving, or is proposed to receive, any fees or remuneration from the community economic development corporation or whose associate or affiliate is receiving, or is proposed to receive, any fees or remuneration from the community economic development corporation is entitled to vote in person or by proxy at a general meeting in respect of an ordinary resolution to approve or ratify the payment of any fees or remuneration by the community economic development corporation.

Other requirements for registration

3(1) The articles of a community economic development corporation applying for registration under the Act must, in respect of the ECB investment program, provide that fees or remuneration of any kind to any shareholder, director or officer of the community economic development corporation, or to any affiliate or associate of those persons, are prohibited except as permitted by an annual ordinary resolution.

(2) It is a requirement under section 30(d) of the Act that a majority of the directors of the community economic development corporation must be ordinarily resident in Alberta at the time of registration and for the duration of the community economic development corporation's registration.

(3) It is a requirement under section 30(d) of the Act that a community economic development corporation that is a corporation

- (a) must not be registered as a venture capital corporation under the Act,
- (b) must have equity capital of at least \$10 000, and
- (c) must have a share structure consisting of only one or both of the following:
 - (i) common shares having no special rights or restrictions;
 - (ii) common shares having special rights relating only to redemption of the shares by the corporation.

(4) It is a requirement under section 30(d) of the Act that a community economic development corporation that is a cooperative

- (a) must have at least \$10 000 from one or a combination of the following:
 - (i) the issuance of membership shares;
 - (ii) the issuance of investment shares;
 - (iii) the raising of money by way of member loans,and
- (b) must have a share structure consisting of one or both of the following:
 - (i) shares having special rights relating only to redemption of the shares by the cooperative;
 - (ii) shares having rights to vote in accordance with section 108 of the *Cooperatives Act*.

Other information for registration

4 For the purposes of section 29(2)(a) of the Act, a community economic development plan must contain the following information:

- (a) the defined community that the community economic development corporation intends to support;
- (b) the social or economic development challenge that the community economic development corporation will attempt to help overcome.

Equity share — prescribed rights

5(1) Subject to the Act, for the purposes of the definition of “equity share” in section 2(1)(k) of the Act, prescribed rights and restrictions are rights and restrictions attached to the share, or rights and restrictions contained in or forming part of an agreement, commitment or understanding in respect of the share of a community economic development corporation, that

- (a) create a debt between the holder or beneficial owner of the share and any other person,
- (b) impair or will impair the ability of the community economic development corporation to maintain the levels of equity capital invested in eligible investments required by section 10 of the Act,

- (c) impair or will impair the ability of an eligible community business, in which the community economic development corporation has made an eligible investment, to carry on an ongoing business with a reasonable expectation of profit, or
- (d) will entitle the holder or beneficial owner of the share to reduce the impact of any loss the holder or beneficial owner will sustain in holding or disposing of the share.

(2) Notwithstanding subsection (1), prescribed rights and restrictions do not include rights and restrictions that become operative on the death, permanent disability, bankruptcy or other similar hardship of a shareholder of the community economic development corporation or the eligible community business in which the community economic development corporation has made an eligible investment if that shareholder is a party to a contract with the community economic development corporation or the eligible community business.

(3) For the purpose of subsection (2), “similar hardship” means a hardship that, in the opinion of the Minister, warrants overriding the considerations referred to in subsection (1).

Notice to Minister

6 A community economic development corporation must notify the Minister within 30 days

- (a) of ceasing to maintain a place of business or a permanent establishment, as defined in the *Alberta Corporate Tax Act*, in Alberta,
- (b) of changing its registered office under the *Business Corporations Act* or the *Cooperatives Act*, as the case may be,
- (c) of acquiring a different or additional place of business or permanent establishment, as defined in the *Alberta Corporate Tax Act*, in Alberta or elsewhere,
- (d) of changing its fiscal year-end,
- (e) of directly or indirectly acquiring, redeeming or cancelling one of its own shares,
- (f) of failing to comply with section 10(3), 13(1), 14, 15, 16, 17, 18, 19 or 20 of the Act,

- (g) if an investment ceases to meet the criteria set out in section 12(1)(b) or (e) of the Act,
- (h) of passing a resolution referred to in section 23(1)(a) to (c) or 24(1)(a) of the Act, or
- (i) of taking or having taken against it action referred to in section 25(b) to (d) of the Act.

Cancellation of tax credit certificate

7(1) The Minister must cancel a tax credit certificate issued under section 21 of the Act and issue a new tax credit certificate where information on the original certificate is incorrect or has changed since the date the original tax credit certificate was issued or for any other similar reason the Minister considers appropriate.

(2) A tax credit certificate cancelled under subsection (1) is deemed never to have been issued.

(3) A tax credit certificate issued under subsection (1) is deemed to have been issued on the same date that the certificate cancelled under subsection (1) was issued under section 21 of the Act.

Application of sections 6 to 28 of Act

8 For the purposes of section 32 of the Act, sections 6 to 28 of the Act, as modified to read for the purpose of applying to a community economic development corporation, are set out in the Schedule.

Coming into force

9 This Regulation comes into force on August 1, 2018.

Schedule**Application of sections 6 to 28 of the Act to a Community Economic Development Corporation****Register of community economic development corporations**

6(1) The Minister must maintain a register of community economic development 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 community economic development corporation:

- (a) the name of the community economic development corporation;
- (b) the date it was registered under this Part;
- (c) the location of its registered office;
- (d) the principal place of business of the community economic development corporation;
- (e) the total amount of equity capital approved under section 11;
- (f) the amount of equity capital, to the knowledge of the Minister, that the community economic development corporation has raised;
- (g) the amount that the community economic development corporation, to the knowledge of the Minister, has invested in eligible investments.

Permanent establishment

7(1) In this section, “permanent establishment” has the same meaning as in the federal Act.

(2) A community economic development 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

8(1) For the purposes of the ECB investment program, a community economic development 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 eligible community businesses in which it has made or proposes to make an eligible investment.

(2) No act of a community economic development corporation, including the transfer of property by or to it, is invalid merely because the act contravenes subsection (1).

Restrictions on purchase of shares and share certificates

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

(2) All share certificates of a community economic development 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 community economic development corporation must not alter its share structure.

(4) Subsections (1) to (3) apply only in respect of shares referred to in section 11(1)(a).

Minimum capital requirements

10(1) By the end of its first year after the date of registration under this Part and afterwards, a community economic development corporation must have equity capital raised in accordance with section 11 of at least \$50 000.

(2) The amount of equity capital referred to in subsection (1) includes the amount referred to in section 3(3) or (4)(a)(ii), as the case may be, of the *Community Economic Development Corporation Tax Credits Regulation*.

(3) A community economic development corporation must

(a) have invested in eligible investments in an amount that is

- (i) equal to or greater than 40% of the equity capital it has raised during any fiscal year by the end of its first following fiscal year,
- (ii) equal to or greater than 60% of the equity capital it has raised during any fiscal year by the end of its second following fiscal year, and
- (iii) equal to or greater than 80% of the equity capital it has raised during any fiscal year by the end of its third following fiscal year,

and

(b) keep that amount in eligible investments for at least 5 years after the date of the applicable investment.

(4) An amount referred to in subsection (3)(a) is reduced by the amount of any dividend paid from the community economic development corporation to its shareholders if the dividend is not one that is paid from the community economic development corporation's

- (a) net income, or
- (b) retained earnings

calculated in accordance with generally accepted accounting principles.

(5) For the purposes of subsection (3), the amount of equity capital invested by a community economic development corporation in an eligible investment is deemed to be zero as at the date the investment was made if an agreement, commitment or understanding in respect of that investment may result in the acquisition of that investment from the community economic development corporation within 5 years, or such shorter time as the Minister specifies.

(6) Subsection (5) does not apply with respect to an agreement, commitment or understanding authorizing the acquisition of the investment on the death, permanent disability, bankruptcy or similar hardship of a shareholder of the community economic development corporation or the eligible community business in which the community economic development corporation makes an eligible investment if that shareholder is a party to a contract with the community economic development corporation or the eligible community business.

(7) For the purposes of subsection (6), “similar hardship” means a hardship that, in the opinion of the Minister, warrants overriding subsection (5).

(8) Subsection (2) applies only in respect of shares referred to in section 11(1)(a).

Equity capital issues

11(1) A community economic development corporation may apply to the Minister for approval to raise equity capital for the purposes of the ECB investment program, 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 community economic development corporation create a separate class of shares to be issued to corporations and individuals as defined in section 21(1),
- (b) a condition that the shares may only be issued, as the Minister specifies, to corporations and individuals as defined in section 21(1),

- (c) a condition setting the maximum consideration for which those shares may be issued to those corporations and individuals,
- (d) a condition that the equity capital be raised only for the purposes of an investment in an eligible community business referred to in section 12(1)(e) that is engaged in a business activity described in section 12(8), and
- (e) a condition setting the maximum amount of equity capital that may be raised over the previous 12-month period, which must not exceed \$3 000 000.

(2) A community economic development corporation may incur annual expenses of no more than 20% of its equity capital raised under subsection (1), other than expenses paid out of retained earnings, if

- (a) the expenses are reasonable and are incurred for
 - (i) share issuance,
 - (ii) office occupancy,
 - (iii) legal fees,
 - (iv) preparation of financial accounts by an external accountant,
 - (v) preparation of the annual return under section 28, or
 - (vi) management fees of no more than 3% per annum of the equity capital raised,

and

- (b) any expenses paid to a person who controls directly or indirectly, or who belongs to a group that controls directly or indirectly, the community economic development corporation, have been specifically approved by ordinary resolution in advance of payment and are made to a person whose business it is to provide the services or things in respect of which the expenses were incurred.

(3) For the purposes of subsection (2), retained earnings and expenses must be determined in accordance with generally accepted accounting principles.

Investment in eligible community business

12(1) A community economic development corporation may, for the purposes of the ECB investment program, make an investment in an eligible community business if the following criteria are met:

- (a) subject to subsection (2), the eligible community business, together with its affiliates, has no more than 100 employees calculated in accordance with subsections (4) and (5);
- (b) at least the percentage of the wages and salaries, determined in accordance with subsections (6) and (7), of the eligible community business is or will be paid to employees who regularly report to work at operations located in Alberta;
- (c) not more than 20% of the eligible community business's assets are located outside Alberta;
- (d) the eligible community business's permanent establishment, as defined in the *Alberta Corporate Tax Act*, is in Alberta;
- (e) the eligible community business, if required by a condition of the Minister, is or will be engaged in Alberta in a business activity described in subsection (8) that is specified by the Minister in the condition;
- (f) the eligible community business is an active business;
- (g) the eligible community business is not a non-profit, charitable or non-taxable corporation or cooperative;
- (h) the eligible community business has not received any funding from a venture capital corporation or another eligible business corporation;
- (i) if the eligible community business has identified a social challenge that the economic community will attempt to overcome, the Minister is satisfied that a percentage, as set by the Minister, of the amount received from the community economic development corporation has been used as an expense towards that social challenge;
- (j) the Minister is satisfied that the eligible community business is contributing to one or both of the following:
 - (i) to the economic development of the rural community;

- (ii) to the improvement of a social challenge of the economic community;
- (k) the eligible investment consists or will consist of
 - (i) the direct acquisition from the eligible community business of equity shares issued for the purpose of raising new equity capital,
 - (ii) a secured loan to the eligible community business,
 - (iii) the direct acquisition from an affiliate of the eligible community business of equity shares of the affiliate, or
 - (iv) a debt instrument that meets the criteria set out in subsection (11);
- (l) the funds paid by the community economic development corporation for any equity shares referred to in clause (k)(iii) are in turn invested in equity shares of the eligible community business by the affiliate within the time limits provided for in section 10(3);
- (m) the investment is not prohibited under sections 13 to 16.

(2) Subsection (1)(a) does not apply in respect of an eligible community business in which a community economic development corporation previously invested at a time when the eligible community business had fewer than 100 employees calculated in accordance with subsection (4).

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

- (a) an eligible community 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)(v) or (vi), and
- (b) the Minister is satisfied that the eligible community 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 eligible community business.

(4) The number of employees of a corporation or cooperative must be calculated, at the option of the community economic development corporation, in accordance with either of the following formulas:

$$(a) \text{ Number of Employees} = \frac{\text{Total Hours}}{40 \times w}$$

where

Total Hours = the total hours worked by all employees each of whom worked for at least 20 hours (counting all time worked by each employee whether for the eligible community business, any of its affiliates or both) during any week of the calculation period;

w = the number of weeks in the calculation period;

$$(b) \text{ Number of Employees} = \frac{\text{Employee Costs} \times 52}{w} \div 57\,000$$

where

Employee Costs = all amounts paid or payable by the eligible community business to or on behalf of employees for work performed or services provided by them during the calculation period;

w = the number of weeks in the calculation period.

(5) For the purpose of subsection (1)(a), the number of employees of an eligible community business together with its affiliates, is the sum of the number of employees calculated pursuant to subsection (4) for the eligible community business and each of its affiliates.

(6) For the purposes of subsection (1)(b), the percentage of wages in Alberta is

- (a) in the case of an eligible community business engaged in the export of goods from Alberta or in the provision of services outside Alberta, at least 50%, and
- (b) in the case of all other eligible community businesses, at least 75%.

(7) The percentage of wages and salaries that are paid to employees of a corporation or corporations for the purposes of subsection (1)(b) must be determined in accordance with the following formula:

$$\text{Percentage of wages and salaries} = \frac{\text{Wages (AB)}}{\text{Total Wages}} \times 100$$

where

Wages (AB) = the total remuneration that was paid to employees of the corporation or corporations who regularly

reported to work at operations located in Alberta during the calculation period;

Total Wages = the total remuneration that was paid to all employees of the corporation or corporations during the calculation period.

(8) For the purposes of subsection (1)(e), the business activities that an eligible community business must be engaged in are

- (a) in the case of an eligible community business contributing to the economic development of the rural community, one or more of the following so long as the eligible community business has a permanent establishment in the rural community:
 - (i) gaining access to new markets or developing new products in the rural community;
 - (ii) offering new business opportunities in the rural community;
 - (iii) maintaining a presence in the rural community;
- (b) in the case of an eligible community business contributing to the improvement of a social challenge of the economic community, one or both of the following:
 - (i) increasing the economic community's access to consumer goods and services that improves the community's social challenge;
 - (ii) providing services or training to its employees that improves their social challenge;
- (c) in the case of an eligible community business contributing to both the economic development of the rural community and the improvement of a social challenge of the economic community, one or more of the activities described in clauses (a) and (b).

(9) Despite subsection (8), a business activity described under subsection (8) does not include

- (a) exploration or extraction of minerals or the operation of a mine,
- (b) financial services such as providing loans, selling insurance or real estate or trading in securities,
- (c) property management or the rental or leasing of land or improvements,

- (d) the development of or improvement to land,
- (e) agricultural activities other than value added agricultural activities such as an activity that changes, alters or modifies a product that adds value to an agricultural commodity through a manufacturing process,
- (f) the sale of liquor or cannabis,
- (g) professional practices,
- (h) a franchise business,
- (i) duplicating services that are ordinarily provided by government or an agency of the government,
- (j) the lease of tangible or intangible personal property to a person for the person's personal consumption or use,
- (k) electricity generation activities unless specifically approved by the Minister, or
- (l) any activity that the Minister considers would be contrary to public policy,

(10) The Minister may exercise his or her discretion to the extent required in reaching a conclusion that a business activity is one described under subsection (8) or (9).

(11) For the purposes of subsection (1)(k)(iv), the criteria for a debt instrument are as follows:

- (a) the debt instrument is secured by property, and the property has a value that does not exceed 50% of the amount of the indebtedness under the debt instrument at the time of the investment;
- (b) the debt instrument does not
 - (i) restrict the borrower from incurring other indebtedness, or
 - (ii) penalize the borrower for incurring other indebtedness;
- (c) the outstanding balance from time to time under the debt instrument bears interest at a rate not exceeding 12% per annum, calculated semi-annually not in advance;
- (d) the debt instrument will be converted within 18 months after its issuance into one or more equity shares issued by an eligible community business.

(12) For the purposes of this section, “calculation period” means

- (a) where an eligible community business or affiliate of an eligible community business has been in business for a period of less than one year as at the date of the calculation, that entire period, or
- (b) where an eligible community business or affiliate of an eligible community business has been in business for one year or longer, the 52 weeks just ended at the date of the calculation.

(13) For the purpose of applying the formulas in this section to determine whether a proposed investment by a community economic development corporation in an eligible community business is an eligible investment, the calculation period ends immediately before the community economic development corporation proposes to make the investment.

(14) For the purposes of subsections (1)(j)(i) and (8)(a)(ii), “rural community” means

- (a) a municipal district as defined in the *Municipal Government Act*,
- (b) a municipal authority, other than a municipal district, as defined in the *Municipal Government Act* with a population not greater than 25 000 at the time the first investment by a community economic development corporation is made in the municipal authority,
- (c) a Metis settlement, or
- (d) an Indian reserve under the *Indian Act* (Canada),

but does not include an urban service area established within a specialized municipality under the *Municipal Government Act* where the urban service area has a population greater than 25 000.

(15) For the purposes of subsection (1)(j)(ii) and (8)(b), “economic community” means a group of individuals that may be distinguished by common economic characteristics.

(16) For the purposes of subsection (1)(g), “not a non-profit”, in respect of a corporation or cooperative, means a corporation or cooperative that, in accordance with its articles, has a right to issue dividends or patronage returns to its shareholders or members, as the case may be.

Investment for certain purposes prohibited

13(1) Subject to subsection (3), a community economic development corporation must not, for the purposes of the ECB investment program, make or hold an investment in an eligible community business if all or part of the proceeds of that investment are directly or indirectly used or intended to be used by the eligible community 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, described in section 12(8), of the eligible community business;
- (d) acquiring securities, other than the acquisition of equity shares of an affiliate of the eligible community business that complies with the criteria set out in section 12(1)(k)(iii);
- (e) purchasing goods or services from
 - (i) the community economic development corporation,
 - (ii) a director, officer or shareholder of the community economic development corporation, or
 - (iii) an associate of a director, officer or shareholder of the community economic development corporation,
other than
 - (iv) services of the type described in section 8(1)(b) that are purchased at fair market value by the eligible community business, or
 - (v) goods or services that are sold at fair market value to the eligible community 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, other than a secured loan, unless
 - (i) the Minister considers that the payment is necessary for the financial viability of the eligible community business, or
 - (ii) the debt obligation was incurred with the prior written approval of the Minister in anticipation of an

investment in the eligible community business by the community economic development 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 eligible community business or one of its affiliates;
 - (ii) the retirement of any part of a liability to a shareholder of the eligible community business or one of its affiliates or of a liability to a shareholder's associate or affiliate;
 - (iii) the payment of dividends;
 - (iv) subject to subsection (5), the funding of all or part of the purchase by the eligible community 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 eligible community 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.

(2) If an eligible community business issues equity shares to a community economic development 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 eligible community business.

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

(4) The onus of demonstrating that goods and services are sold for fair market value to an eligible community business in accordance with subsection (1)(e) is on the community economic development corporation and the eligible community business.

(5) Subsection (1)(g)(iv) does not apply where all or part of the proceeds of the investment referred to in that section are directly or

indirectly used, or intended to be used, by the eligible community business to purchase any assets of a proprietorship, partnership, joint venture, trust or corporation

- (a) for utilization in a business or activity that is neither the same as nor similar to any business or activity that the seller of the assets to the eligible community business carried on before, or at the time of, the sale of the assets to the eligible community business,
- (b) that is the subject of a proposal to, or arrangement with, its creditors that has been approved by the court under the *Bankruptcy and Insolvency Act* (Canada), or
- (c) if all or substantially all of the purchased assets are under the control of a receiver, receiver manager, sequestrator or trustee in bankruptcy.

Control of eligible community business — prohibitions

14 A community economic development corporation must not make or hold an investment in an eligible community business if it and any other community economic development 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, except pursuant to any rights under a secured loan, own, directly or indirectly, shares carrying 50% or more of the voting rights for the election of directors of the eligible community business or would, in any manner, control the eligible community business.

Non-arm's length investment prohibited

15(1) A community economic development corporation must not make or hold an investment in an eligible community business if any of the shares of the community economic development 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 eligible community business;
- (b) an associate of a major shareholder of the eligible community business;

- (c) a voting trust for which the trustee votes shares of the eligible community business;
- (d) the eligible community business or an associate or affiliate of the eligible community business.

(2) A community economic development corporation must not make or hold an investment in an eligible community business if the eligible community business or an associate, affiliate, director, officer or shareholder of the eligible community 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 community economic development corporation;
- (b) an associate or affiliate of the community economic development corporation;
- (c) a director, officer or shareholder of the community economic development corporation;
- (d) a member of any common interest group in respect of the community economic development corporation;
- (e) another person, for the purpose of that person making an investment in the community economic development corporation.

Aggregate investment by community economic development corporation

16(1) A community economic development corporation must not, for the purposes of the ECB investment program, make an investment in an eligible community business if, as a result of that investment, the aggregate of all amounts received by that eligible community business and any affiliates of that eligible community business from the community economic development corporation and any other community economic development corporation or corporations, directly or indirectly, would be greater than \$3 000 000 in the previous 12-month period.

(2) For the purposes of this section, amounts received indirectly by an eligible community business from community economic development corporations include amounts received by an affiliate of the eligible community business from community economic development corporations.

Action to be taken if investment becomes prohibited

17(1) If an investment of a community economic development corporation becomes prohibited under sections 13 to 16, the

community economic development 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) For the purposes of subsection (1) and section 18, if an investment is a secured loan, the investment is disposed of when the secured loan is repaid or assigned to another person.

(3) If the Minister is satisfied that non-compliance with a provision of sections 13 to 16 by the community economic development 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 community economic development corporation from the consequences of the non-compliance for a period the Minister considers appropriate.

Changes in eligibility

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

(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 (e) change so that the eligible community business again conforms with section 12(1)(b) or (e).

(3) The Minister may by order

- (a) relieve a community economic development 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 eligible community business's non-conformance with section 12(1)(b) or (e) was not imminent at the time the community economic development corporation made the investment, and

- (d) the eligible community 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 (e).

Permitted investments and authorized expenses

19(1) A community economic development corporation must not, for the purposes of the ECB investment program, make any investments other than investments in the following:

- (a) subject to a condition of the Minister under section 11(1)(d), eligible investments;
- (b) money on deposit in Alberta at a treasury branch, credit union or member of the Canada Deposit Insurance Corporation;
- (c) a security, as defined in the *Securities Act*, of an eligible community business the equity shares of which would qualify as an eligible investment;
- (d) the investment protection account under section 20;
- (e) securities that are issued by the Government of Alberta or Canada.

(2) A community economic development corporation must not make an investment in a security under subsection (1)(c) unless the security is issued directly to the community economic development corporation by the eligible community business.

Investment protection account

20(1) A community economic development corporation must pay an amount of money equal to 30% of all amounts received by it as equity capital under section 11 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 community economic development 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 previously been used to acquire an eligible investment

is equal to or less than 37.5% of the community economic development corporation's aggregate eligible investments, the Minister must, subject to subsection (8), authorize payment out of the investment protection account to the community economic development 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 or, in the case of an eligible investment that is a secured loan, 37.5% of the amount of the secured loan, 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 community economic development corporation must pay the money to the Finance Minister.

(6) Interest earned on money in the investment protection account is payable to the community economic development corporation.

(7) Despite subsection (6), if

- (a) the registration of a community economic development corporation is revoked under section 27, or
- (b) a community economic development corporation fails to comply with section 10(1) and (3),

the community economic development 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(3) expires.

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

(9) If a community economic development 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 pursuant to subsection (10) to be paid out of the investment protection account to the community economic development corporation.

(10) An amount authorized under subsection (9) to be paid out of the investment protection account must be the lesser of

- (a) 30% of the amount for which the share acquired was originally issued, and
- (b) the amount deposited in the investment protection account in respect of the share acquired.

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 community economic development corporation must, within 90 days following the end of a calendar year, apply to the Minister on behalf of its eligible shareholders that are corporations, in a form approved by the Minister, for a tax credit certificate entitling each of those eligible shareholders to an investor tax credit under the *Alberta Corporate Tax Act* equal to 30% of the amount received by the community economic development corporation from each of those eligible shareholders for those shares in the then-current calendar year.

(3) A community economic development corporation must, within 90 days following the end of a calendar year, apply to the Minister on behalf of its eligible shareholders who are individuals, in a form approved by the Minister, for a tax credit certificate entitling each of those eligible shareholders to an investor tax credit under the *Alberta Personal Income Tax Act* equal to 30% of the amount received by the community economic development corporation from each of those eligible 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 eligible 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 eligible 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 community economic development corporation is complying with this Act and the regulations;
- (b) the community economic development 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 community economic development corporation the raising of which has been approved in accordance with section 11;
- (e) the eligible shareholder acquired the shares directly from the community economic development corporation or its agent acting in that behalf;
- (f) the eligible shareholder, if an individual, was resident in Alberta on the date the shareholder subscribed for the shares.

(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 community economic development 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 community economic development 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 community economic development corporation and to the Finance Minister.

Repayment of tax credit amount

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

(2) If a community economic development 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 community economic development corporation must pay to the Finance Minister an amount of money equal to 30% of the consideration paid to the community economic development corporation by the eligible 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 community economic development corporation must pay to the Finance Minister an amount equal to 30% of the greater of
 - (i) the consideration paid by the eligible community economic development 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 community economic development corporation for the issue of that share or those shares.

(3) If a community economic development 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 community economic development corporation must pay to the Finance Minister an amount equal to 30% of the consideration paid

to the community economic development corporation in respect of the issue of that share or those shares.

(4) If the Minister considers that a community economic development 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 community economic development 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 community economic development 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 community economic development corporation has complied with section 10(3) throughout the period required by that section, no amount is payable under this section.

(7) For the purposes of this section, a community economic development corporation is deemed to have acquired one of its own shares at the time the eligible shareholder disposing of the share first received consideration from the community economic development 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 community economic development corporation's own shares that are acquired or deemed under this section to be acquired by it.

(9) This section applies only in respect of shares referred to in section 11(1)(a).

Voluntary reductions in capital

23(1) For the purposes of section 22, a community economic development corporation is deemed to have acquired one of its own

shares if, pursuant to the *Business Corporations Act* or the *Cooperatives Act*, as the case may be, it does any of the following:

- (a) cancels a share surrendered to the community economic development 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* or the *Cooperatives Act*, a resolution of a community economic development corporation to reduce its stated capital does not take effect until the community economic development corporation has paid the money payable by it to the Finance Minister under section 22.

(3) This section applies only in respect of shares referred to in section 11(1)(a).

Voluntary cancellation of registration

24(1) If a community economic development corporation does both of the following, the Minister must cancel the community economic development 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 community economic development corporation may carry on business in accordance with the *Business Corporations Act* or the *Cooperatives Act*, as the case may be.

Repayment on revocation, dissolution, amalgamation or cancellation

25(1) If a community economic development 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 community economic development 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).

(2) In the case of a community economic development corporation that is a cooperative, a resolution referred to in subsection (1)(c)(ii) and (d) is met only if the members and the shareholders who have voting rights each pass the resolution.

Liability of third party

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

- (a) a director or officer of
 - (i) a community economic development corporation, or
 - (ii) an eligible community business in which an investment under section 12 was made by a community economic development corporation,
- (b) a member of a common interest group that controls
 - (i) a community economic development corporation, or
 - (ii) an eligible community business described in clause (a)(ii),

or

- (c) in the case of a community economic development corporation that is a corporation, a major shareholder of
 - (i) the community economic development corporation, or
 - (ii) an eligible community 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 community economic development 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 community economic development 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 community economic development corporation if

- (a) the Minister considers that the community economic development 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 community economic development corporation fails to supply information, records or documents when they are required under this Act,
- (c) the community economic development corporation supplies information, records or documents referred to in clause (b) that contain false or misleading information, or

- (d) the community economic development corporation has no remaining eligible investments as required by section 10(3).

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

- (a) impose conditions to be complied with by the suspended community economic development 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 community economic development 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(1) Within 6 months after its fiscal year end, a community economic development corporation must prepare and file with the Minister

- (a) an annual return setting out the information described in subsection (2), and
- (b) a copy of the most recent financial statements of the community economic development corporation that have been reviewed by a chartered professional accountant or other person who is a licensed or registered member of an accounting association.

(2) For the purposes of subsection (1), a community economic development corporation must, with respect to its most recently ended fiscal year, include the following information in its annual return:

- (a) the amount of equity capital raised by the community economic development corporation;
- (b) the aggregate value at cost of investments made by the community economic development corporation, the name of each eligible community business the shares of which the community economic development corporation sold and the value at cost of those shares;

- (c) the balance held in the investment protection account of the community economic development corporation at the end of the fiscal year;
- (d) the aggregate amount of expenses incurred by the community economic development corporation and the amount paid as management fees;
- (e) whether any fees or remuneration were paid to the shareholders, officers or directors of the community economic development corporation or to any associate or affiliate of any of them by an eligible community business in which the community economic development corporation made an eligible investment;
- (f) whether the articles of the community economic development corporation were amended in a manner that changed the share structure of the community economic development corporation or altered any rights or restrictions attached to any share of the community economic development corporation;
- (g) the amount of all dividends received by the community economic development corporation in respect of an eligible investment made by it in an eligible community business;
- (h) whether the community economic development corporation redeemed any of its shares;
- (i) whether a share redemption referred to in clause (h) was reported to the Minister;
- (j) in relation to a share redemption referred to in clause (h) that was not reported to the Minister, the name of each investor whose shares were redeemed, the date of each redemption, the number of shares redeemed in each redemption, the investor's cost of each share redeemed in each redemption and the consideration paid by the community economic development corporation in respect of the redemption;
- (k) whether the community economic development corporation paid any expenses to any person or group of persons who, at the time the payment was made, directly or indirectly controlled the community economic development corporation;
- (l) whether the community economic development corporation notified the Minister of the occurrence of any events referred to in section 6 of the *Community Economic Development Corporation Tax Credits Regulation*.



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