

2004

CHAPTER 14

An Act to amend *The Labour-sponsored Venture Capital Corporations Act*

(Assented to June 10, 2004)

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

Short title

1 This Act may be cited as *The Labour-sponsored Venture Capital Corporations Amendment Act, 2004*.

S.S. 1986, c.L-0.2 amended

2 *The Labour-sponsored Venture Capital Corporations Act* is amended in the manner set forth in this Act.

Section 2 amended

3(1) The following clause is added after clause 2(1)(l):

“(l.1) ‘**equity capital**’ means the aggregate consideration for which eligible equity shares are issued”.

(2) Subsection 2(3) is repealed and the following substituted:

“(3) Notwithstanding subsection (2), if a provision of this Act refers to the *Income Tax Act* (Canada), the definitions and interpretations contained in or made by or pursuant to the *Income Tax Act* (Canada) apply with respect to that provision”.

New section 4

4 Section 4 is repealed and the following substituted:

“Application for registration

4(1) A corporation incorporated or registered pursuant to *The Business Corporations Act* or an investment co-operative may apply to the minister to be registered as a labour-sponsored venture capital corporation.

(2) An application pursuant to subsection (1) must be made in the form prescribed by the minister.

(3) An application pursuant to subsection (1) must:

(a) set out:

(i) the name of the corporation;

(ii) the location of its head office or primary place of business in Saskatchewan; and

(iii) any other matters prescribed in the regulations respecting the corporation;

- (b) be accompanied by a certified copy of the corporation's articles of incorporation;
- (c) be accompanied by the fee prescribed in the regulations;
- (d) be signed by two officers or one director and one officer of the corporation; and
- (e) be certified by affidavit of one of the officers or directors signing the application".

Section 5 amended

5 Section 5 is amended:

(a) by repealing clauses (b) and (c) and substituting the following:

"(b) in the case of a proposed Type B corporation, the corporation has never previously carried on business;

"(c) in the case of a proposed Type B corporation, subject to the regulations, the corporation's equity shares may be issued for an aggregate consideration of not more than \$5,000,000 or any other maximum aggregate amount of consideration that may be prescribed in the regulations for any corporation or class of corporations to which the corporation belongs";

(b) in clause (e):

(i) by repealing subclause (iv) and substituting the following:

"(iv) the holder of equity shares of that class has the right, on dissolution of the corporation, to participate in the remaining property of the corporation in a manner that, in the opinion of the minister, is fair"; **and**

(ii) by repealing subclause (vi) and substituting the following:

"(vi) the corporation shall issue equity shares of that class only to:

(A) eligible investors; or

(B) registered retirement savings plans or registered retirement income funds if the sole beneficiary of each plan or fund is an eligible investor"; **and**

(c) by repealing clause (e.1).

Section 6 amended

6 Subsection 6(4) is repealed and the following substituted:

"(4) If, in the minister's opinion, the number of corporations registered pursuant to this Act will be sufficient to take up the amount of money prescribed in the regulations that is foregone by way of tax credit, the minister may, by order, do all or any of the following:

- (a) suspend the further registration of corporations;

- (b) suspend the allowance of tax credits;
- (c) allocate the tax credits amongst the registered corporations.

“(4.1) An order issued pursuant to subsection (4) may be in force for any period that the minister may specify in the order”.

New section 8

7 Section 8 is repealed and the following substituted:

“Prohibition on winding-up, etc., without prior approval

8(1) No labour-sponsored venture capital corporation shall:

- (a) subject to subsection (2), dissolve or otherwise wind-up its business and affairs; or
- (b) without having the prior written approval of the minister:
 - (i) apply to continue in a jurisdiction other than Saskatchewan or to continue pursuant to an Act other than the Act pursuant to which it was incorporated;
 - (ii) amend its articles of incorporation;
 - (iii) amalgamate with any other corporation; or
 - (iv) apply to any court to obtain an order approving an arrangement.

(2) After the period prescribed in the regulations has expired, a labour-sponsored venture capital corporation may apply to the minister for approval to dissolve or otherwise wind-up its affairs and business and, if the minister considers it appropriate, the minister may:

- (a) approve the dissolution or winding-up of the labour-sponsored venture capital corporation; and
- (b) by order impose any terms and conditions that the minister considers necessary with respect to the dissolution or winding-up.

(3) The minister may, at any time, amend, vary, revoke or replace any terms or conditions imposed pursuant to subsection (2) and impose new terms and conditions”.

New section 9

8 Section 9 is repealed and the following substituted:

“Eligible investments, Type A corporation

9(1) Subject to section 11.2, during the 24-month period following the end of the fiscal year in which its equity capital is raised, a Type A corporation shall invest and maintain its equity capital in:

- (a) investment instruments issued by eligible businesses; or
- (b) any other form prescribed in the regulations.

(2) On and after the end of the 24-month period mentioned in subsection (1), a Type A corporation shall invest and maintain at least 75% of its equity capital in investment instruments issued by eligible businesses.

(3) No more than 60% of the equity capital that a Type A corporation has invested may be invested in investment instruments issued by:

- (a) any one eligible business; or
- (b) any combination of one eligible business and one or more corporations that are not dealing at arm's-length with that eligible business.

(4) No Type A corporation shall invest in investment instruments of an eligible business if the Type A corporation is not dealing at arm's-length with the eligible business”.

Section 10 amended

9 Subsections 10(1) and (2) are repealed and the following substituted:

“(1) Subject to section 11.2, before the end of the first six months of its registration pursuant to this Act or any other period that the minister may order, a Type B corporation shall invest its equity capital in investment instruments issued by the eligible business with respect to which approval for registration of the Type B corporation was granted or an associated corporation of that eligible business.

“(2) Subject to section 11.2, on and after the six-month period mentioned in subsection (1), a Type B corporation shall maintain its equity capital in investment instruments issued by the eligible business with respect to which approval for registration of the Type B corporation was granted or an associated corporation of that eligible business”.

New section 12

10 Section 12 is repealed and the following substituted:

“Investment incentives

12(1) Subject to subsections (3) to (6) and section 13, for the 1986 and subsequent taxation years:

- (a) an eligible investor may apply to the minister on a form provided by or acceptable to the minister for a tax credit; and
- (b) on receipt of an application pursuant to clause (a), the minister may allow the tax credit for a taxation year if eligible equity shares were:
 - (i) issued by a labour-sponsored venture capital corporation to:
 - (A) the eligible investor; or
 - (B) a registered retirement savings plan if the sole beneficiary of the plan is the eligible investor; and
 - (ii) acquired by the eligible investor in the taxation year or within 60 days after the end of the taxation year.

(2) Subject to subsections (3) to (6) and section 13, for the 1989 and subsequent taxation years, an individual residing in Saskatchewan on the last day of a taxation year who is entitled to a labour-sponsored funds tax credit pursuant to the *Income Tax Act* (Canada) with respect to a corporation registered pursuant to the *Income Tax Act* (Canada) is eligible for a tax credit if:

(a) the minister is satisfied that the individual meets the requirements of this Act, the regulations and the relevant provisions of the *Income Tax Act* (Canada); and

(b) the minister has approved the corporation to which the tax credit relates.

(3) If an individual claims a tax credit for a taxation year only pursuant to subsection (1), the maximum allowable amount of that tax credit for that taxation year is equal to the lesser of:

(a) 20% of the total acquisition cost to the eligible investor, or to the registered retirement savings plan if the sole beneficiary of the plan is an eligible investor, of the eligible equity shares described in subsection (1); and

(b) \$1,000.

(4) If an individual claims a tax credit for a taxation year only pursuant to subsection (2):

(a) the maximum allowable amount of that tax credit for the 1996 and previous taxation years is equal to the lesser of:

(i) the labour-sponsored funds tax credit determined pursuant to the *Income Tax Act* (Canada) for that taxation year; and

(ii) \$700;

(b) the maximum allowable amount of that tax credit for taxation years after 1996 is equal to the least of:

(i) the labour-sponsored funds tax credit determined pursuant to the *Income Tax Act* (Canada) for that taxation year;

(ii) 15% of the total acquisition cost to the individual, or a registered retirement savings plan of which the individual is the sole beneficiary, in acquiring the shares with respect to which the tax credit mentioned in subclause (i) is given; and

(iii) \$525.

(5) Subject to subsection (6), if an individual claims a tax credit for a taxation year pursuant to both subsections (1) and (2):

(a) with respect to that portion of the tax credit being claimed pursuant to subsection (1), the maximum allowable amount of the total tax credit for that taxation year is equal to the lesser of:

(i) the total of:

(A) 20% of the total acquisition cost to the eligible investor of the eligible equity shares described in subsection (1); and

(B) the amount determined pursuant to the provisions of the *Income Tax Act* (Canada) that are prescribed in the regulations; and

(ii) \$1,000; and

(b) with respect to that portion of the tax credit being claimed pursuant to subsection (2), the maximum allowable amount of the total tax credit for that taxation year is the maximum allowed pursuant to subsection (4).

(6) The maximum tax credit that may be allowed pursuant to subsection (5) for a taxation year is \$1,000.

(7) The minister may allow a tax credit to an individual pursuant to subsection (1) or (2) or both subsections (1) and (2):

(a) if the minister:

(i) has received any information from or on behalf of the individual that the minister considers necessary; and

(ii) is satisfied that the individual meets the requirements of this Act and the regulations; and

(b) only to the extent that a tax credit has not been allowed to the individual for the preceding taxation year with respect to the same transaction.

(8) The minister shall provide an individual who is allowed a tax credit pursuant to subsection (4) with a completed tax credit form certified by the minister”.

New section 15

11 Section 15 is repealed and the following substituted:

“Transfers to R.R.S.P or R.R.I.F.

15(1) Notwithstanding any other provision of this Act, an eligible investor is deemed to continue to be an eligible investor if:

(a) the eligible investor has transferred, in accordance with the *Income Tax Act* (Canada), his or her eligible equity shares to a registered retirement savings plan or a registered retirement income fund; and

(b) the eligible investor or his or her spouse is the sole beneficiary of the registered retirement savings plan or the registered retirement income fund.

(2) The eligible equity shares mentioned in clause (1)(a) are deemed to be held by the eligible investor in compliance with this Act so long as they remain in the registered retirement savings plan or registered retirement income fund mentioned in clause (1)(b).

(3) Notwithstanding any other provision of this Act, an eligible investor is deemed to continue to be an eligible investor if:

(a) in accordance with clause (1)(a), the eligible investor has transferred his or her equity shares to a registered retirement savings plan in which the eligible investor or his or her spouse is the sole beneficiary; and

(b) subsequent to a transfer mentioned in clause (a), the eligible investor or his or her spouse:

(i) transfers, in accordance with the *Income Tax Act* (Canada), his or her eligible equity shares from the registered retirement savings plan mentioned in clause (a) to a registered retirement income fund; and

(ii) is the sole beneficiary of the registered retirement income fund mentioned in subclause (i).

(4) The eligible equity shares mentioned in clause (3)(b) are deemed to be held by the eligible investor in compliance with this Act so long as they remain in the registered retirement income fund mentioned in clause (3)(c).

Section 16 amended

12 Subsection 16(2) is repealed and the following substituted:

“(2) If the financial statements and auditor’s report are not filed within the time required by subsection (1), the minister may revoke the registration of the labour-sponsored venture capital corporation in accordance with section 18”.

Section 17 amended

13 Subsection 17(1.1) is repealed and the following substituted:

“(1.1) If the return is not filed within the time required by subsection (1), the minister may revoke the registration of the labour-sponsored venture capital corporation in accordance with section 18”.

New section 20

14 Section 20 is repealed and the following substituted:

“Audits and investigations

20 Sections 67, 68 and 69 of *The Revenue and Financial Services Act* apply, with any necessary modification, for the purpose of audits or investigations of the books and records of any person required to maintain any information pursuant to this Act”.

Section 26 amended**15 Subsection 26(1) is repealed and the following substituted:**

“(1) Section 83 of *The Revenue and Financial Services Act* applies, with any necessary modification, with respect to any notice, document or return required to be served pursuant to this Act”.

Section 28 amended**16 Clause 28(1)(l) is amended by striking out “18” and substituting “24”.****Coming into force**

17 This Act comes into force on assent.