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c 30 Small Business Development Corporations Amendment Act, 1984

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CHAPTER 30

**An Act to amend the
Small Business Development Corporations Act***Assented to June 13th, 1984*

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

1.—(1) Subclauses 1 (1) (a) (ii), (iii), (iv) and (v) of the *Small Business Development Corporations Act*, being chapter 475 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

- (ii) any corporation of which such person serves as an officer or director,
- (iii) any corporation which is affiliated with associates of such person as otherwise determined under this clause,
- (iv) any trust or estate in which such person has, in the opinion of the Minister, a substantial beneficial interest,
- (v) any trust or estate for which such person serves as trustee or in a similar capacity,
- (vi) any trust or estate in which associates of such person, as otherwise determined under this clause, have, in the opinion of the Minister, a substantial beneficial interest,
- (vii) any partner of such person or any participant in a joint venture of which such person is also a participant, or
- (viii) any member of the family of such person.

(2) Subsection 1 (1) of the said Act is amended by adding thereto the following clauses:

- (fa) “member of the family” means, with respect to a person,
 - (i) his spouse,
 - (ii) his child,
 - (iii) his father, mother, brother or sister or any lawful descendant of such brother or sister,
 - (iv) the brother or sister of his father or mother or any lawful descendant of any such brother or sister,
 - (v) the father, mother or any brother or sister of his spouse or any lawful descendant of any such brother or sister,
 - (vi) his son-in-law or daughter-in-law,
 - (vii) a person adopted by him under the *Child Welfare Act* or the spouse or any lawful descendant of such person, or
 - (viii) his grandfather or grandmother;

R.S.O. 1980, c. 66

R.S.O. 1980, c. 152

- (p) “spouse” means spouse as defined in section 1 and subclause 14 (b) (i) of the *Family Law Reform Act*.

2.—(1) Subsection 5 (1) of the said Act is amended by striking out “Subject to subsection (4)” at the commencement thereof.

(2) Subsections 5 (4) and (5) of the said Act are repealed.

3. Section 7 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 3 and 1983, chapter 26, section 1, is repealed and the following substituted therefor:

Capital requirements

7.—(1) By the end of its first year of registration under this Act and at all times thereafter, a small business development corporation shall have equity shares issued and outstanding for equity capital of at least \$100,000, but not exceeding \$10,000,000 if the corporation is offering its equity shares to the public and \$5,000,000 in the case of any other corporation.

(2) Within the first twelve months after the date of issuance of any equity shares of a small business development corporation and throughout the next twelve months, the small business development corporation shall have acquired and maintained eligible investments, the acquisition cost of which shall be an amount, calculated in the prescribed manner, equal to at least 40 per cent of the equity capital received on the issuance of the equity shares.

Investment requirement

(3) After the end of the twenty-fourth month following the date of issuance of equity shares, the small business development corporation shall have acquired and shall maintain eligible investments, the acquisition cost of which shall be an amount, calculated in the prescribed manner, equal to at least 70 per cent of the equity capital received on the issuance of the equity shares.

Idem

(4) Where a grant or tax credit with respect to any equity share has been paid or allowed out of an incentive fund referred to in clause 22a(1) (a) or (b), each eligible investment referred to in subsections (2) and (3) shall have been made after the 15th day of May, 1984, and shall meet the prescribed conditions of being an eligible investment in a small business which is,

Idem

- (a) primarily located in northern and eastern Ontario, if the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund; and
- (b) a new enterprise, if the grant or tax credit was paid or allowed out of the new enterprise incentive fund.

(5) For the purposes of this section, where a small business development corporation disposes of an eligible investment, it shall be deemed to maintain the investment for a period of six months following the date of the disposition.

Idem

4.—(1) Subclause 9 (1) (d) (v) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 35, section 4, is repealed and the following substituted therefor:

(v) any prescribed purpose or object.

(2) Clause 9 (1) (e) of the said Act is repealed and the following substituted therefor:

- (e) the total number of equity shares acquired by all shareholders of the small business which are small business development corporations does not exceed

49 per cent of the issued and outstanding equity shares of the small business determined in accordance with subsections (2) and (3).

(3) Clause 9 (1) (ea) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 35, section 4, is repealed.

(4) Clause 9 (1) (eb) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 35, section 4 and amended by 1983, chapter 26, section 3, is repealed.

(5) Subsection 9 (2) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 4, is repealed and the following substituted therefor:

Deemed
issued
equity shares

(2) For the purposes of clause (1) (e), any additional equity shares that would be issued,

- (a) on the exercise of a conversion right attached to an existing debt obligation or outstanding share of the small business; or**
- (b) on the exercise of any existing option, warrant or right issued or granted by the small business,**

shall be deemed to have been issued and to be outstanding equity shares.

Deemed
ownership

(3) In determining the percentage of shares of a small business held by a small business development corporation,

- (a) equity shares of the small business held by a shareholder of the small business development corporation, and by any associates of such shareholder, shall be deemed to be held by the small business development corporation; and**
- (b) options, warrants and rights in respect of equity shares of the small business issued by any person other than the small business and held by a shareholder of the small business development corporation, or by any associates of such shareholder, shall be deemed to have been exercised and the equity shares in respect thereof to be held by the small business development corporation.**

5. Clause 10 (1) (d) of the said Act is repealed and the following substituted therefor:

- (d) debt obligations that meet all of the conditions of subsection 9 (1), except clause (c) thereof; or

6.—(1) Clause 12 (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 26, section 4, is repealed and the following substituted therefor:

- (b) as a result of the investment, more than 49 per cent of the issued and outstanding equity shares of the corporation would be held by small business development corporations, their shareholders and associates of their shareholders; or

(2) Clause 12 (1) (d) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 26, section 4, is repealed and the following substituted therefor:

- (d) as a result of the investment, the aggregate of,
 - (i) the issue price of all outstanding shares, and
 - (ii) the balance of all outstanding debt obligations,

of the corporation and its affiliates held by small business development corporations would exceed \$2,500,000; or

- (e) the security issued to the small business development corporation entitled the holder thereof to claim a credit against income tax payable under the *Income Tax Act* (Canada) with respect to the purchase of such security.

R.S.C. 1952,
c. 148

7. Subsection 20 (2) of the said Act is repealed and the following substituted therefor:

(2) The Minister shall not make a grant under section 21 or allow a tax credit under section 22 to any shareholder of a small business development corporation if the small business development corporation has,

Idem

- (a) failed to establish and maintain a trust fund to the satisfaction of the Minister in accordance with section 8; or
- (b) designated any of its issued securities to be a type of security entitling the holder thereof to claim a credit

R.S.C. 1952,
c. 148

against income tax payable under the *Income Tax Act* (Canada) with respect to the purchase of such security.

8. The said Act is amended by adding thereto the following section:

Incentive
funds

22a.—(1) The moneys appropriated by the Legislature for the payment of grants and the allowance of tax credits under this Act shall be held by the Minister in accordance with subsection (2) in separate funds, being,

- (a) the northern and eastern Ontario incentive fund;
- (b) the new enterprise incentive fund; and
- (c) the general fund.

Allocation
to incentive
funds

(2) The amount or percentage of the moneys appropriated by the Legislature for the payment of grants and the allowance of tax credits under this Act that shall be allocated in each year to the incentive funds described in clause (1) (a) or (b) shall be the amount or percentage that is from time to time specified by order of the Lieutenant Governor in Council made on the recommendation of the Treasurer of Ontario and Minister of Economics.

Incentive
fund
election

(3) Prior to the Minister making a grant or allowing a tax credit to a shareholder of a small business development corporation in respect of equity shares issued after the 15th day of May, 1984, the small business development corporation shall file an election in the prescribed form designating, with respect to each such equity share, the fund described in subsection (1) from which a grant or tax credit is to be paid or allowed to the holder of such equity share.

Payment
from funds

(4) The Minister shall make a grant or allow a tax credit to a shareholder of the small business development corporation with respect to each equity share issued after the 15th day of May, 1984, only from the fund designated by the small business development corporation in the election filed under subsection (3).

Commence-
ment

9.—(1) Clause 12 (1) (e) of the said Act, as enacted by subsection 6 (2), and clause 20 (2) (b) of the said Act, as enacted by section 7, shall be deemed to have come into force on the 1st day of July, 1983, and apply to securities issued after the 30th day of June, 1983.

(2) Except as provided in subsection (1), this Act shall be deemed to have come into force on the 16th day of May, 1984. Idem

(3) Notwithstanding subsection (2), where an investment has been made by a small business development corporation before the 16th day of May, 1984, or where a small business development corporation has entered into a binding written commitment before the 16th day of May, 1984 to make an investment and the investment is made by the small business development corporation after the 15th day of May, 1984, the status of the investment as an eligible investment under the Act or as an asset which may be maintained by the small business development corporation shall be determined as if sections 1, 4 and 6 of this Act had not been enacted. Application

10. The short title of this Act is the *Small Business Development Corporations Amendment Act, 1984*. Short title

