

Chapter 4

AN ACT TO AMEND THE NUNAVUT BUSINESS CREDIT CORPORATION ACT

(Assented to March 11, 2025)

The Commissioner, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. The *Nunavut Business Credit Corporation Act*, R.S.N.W.T. 1988,c.107(Supp.), is amended by this Act.

2. Section 1 is amended by repealing the definitions of "application", "bonding company", "borrower", "business enterprise", "Financial Management Board" "guarantee", "guaranteed loan", "indemnified bond", "indemnity", "lending officer", "prescribed", "public service", "regional board", "resident" and "resident business enterprise" and adding the following definitions in alphabetical order:

"application" means an application made under section 27 or 28; (*demande*)

"borrower" means a person to whom a loan has been made or a financial instrument has been issued; (*emprunteur*)

"business enterprise" means an enterprise carrying on business in Nunavut that is

- (a) a company or corporation registered or incorporated under the *Business Corporations Act*,
- (b) a co-operative association registered or incorporated under the *Co-operative Associations Act*,
- (c) a partnership for which a declaration or certificate is registered under the *Partnership Act*,
- (d) a corporation incorporated under the *Canada Not-for-profit Corporations Act* and commonly known as a community futures organization, or
- (e) an individual; (*entreprise commerciale*)

"financial instrument" includes a bond, letter of credit, loan guarantee or other similar instrument; (*instrument financier*)

3. Subsection 5(1) repealed and replaced by

Powers

5. (1) Subject to this Act, the Corporation may
 - (a) for the purpose of stimulating economic development and employment in Nunavut, make loans and issue financial instruments to business enterprises; and
 - (b) acquire and hold security for the due discharge of obligations under a loan made or a financial instrument issued by it, and sell or otherwise dispose of or realize on the security.

4. Section 6 is repealed and replaced by

Board of Directors

6. (1) The Corporation has a Board of Directors consisting of a minimum of five and maximum of 12 directors appointed by the Commissioner in Executive Council, on the recommendation of the Minister.

Eligibility

- (2) To be eligible for appointment as a director, an individual must
- (a) have owned or managed a business enterprise in Nunavut; or
 - (b) have, in the opinion of the Minister, business or other expertise relevant to the economy of Nunavut.

Chairperson and vice-chairperson

(3) The Commissioner in Executive Council, on the recommendation of the Minister, must designate a chairperson and vice-chairperson of the Board from among the directors.

Term

(4) A director holds office, during pleasure, for a term of three years.

5. Subsection 7(2) is repealed and replaced by

Ministerial directives

(2) The Minister may issue directives to the Board and the Board, in exercising its powers and performing its duties, must act in accordance with the directives.

6. Section 8 is amended by renumbering it as subsection 8(1) and adding the following after subsection 8(1):

Policies and guidelines

(2) The Board may establish policies and operational guidelines for the conduct of business of the Corporation.

Copies to Minister

(3) The Board must provide the Minister with a copy of any by-law, policy or operational guideline made or established under this section, including any amendments to a by-law, policy or operational guideline.

7. Section 14 is repealed and replaced by

Employees

14. Employees of the Corporation, other than the manager, must be appointed and employed under the *Public Service Act*.

8. Section 15 is amended as follows:

Confidentiality

15. Any information received by an employee of the Corporation or a director about a business enterprise that applies for a loan or financial instrument, ~~bond, guarantee or indemnity~~ is confidential and ~~shall~~ must not be disclosed by the employee or director

- (a) except as may be required in the administration of this Act or the regulations or any proceeding under this Act or the regulations; or
- (b) unless the business enterprise consents.

9. Sections 17 to 26 and the heading preceding them are repealed.

10. (1) Subsection 27(1) and the heading preceding it are repealed and replaced by

LOANS AND FINANCIAL INSTRUMENTS

Application for loan

27. (1) An application for a loan may be made to the manager.

(2) Subsection 27(3) is amended as follows:

Determination of eligibility

(3) For the purposes of subsection (2), the Board ~~or the manager, manager, lending officer or regional board,~~ when considering an application, ~~shall~~ must determine whether an applicant would likely be unable to obtain a loan from a financial institution on reasonable terms and conditions or, ~~where~~ if the applicant is able to obtain a loan, whether the terms and conditions of a loan from a financial institution are reasonable.

11. Sections 28 to 30 are repealed and replaced by

Application for financial instrument

28. An application for a financial instrument may be made to the manager.

Consideration of applications

29. The manager must consider every application submitted in the approved form and with the fee prescribed by regulation, unless the principal amount of the loan or financial instrument would exceed the maximum set out in subsection 37(3).

Recommendation by manager

30. (1) After considering the merits of an application, the manager must, if the principal amount of a loan or financial instrument is greater than \$500,000, recommend to the Board

- (a) that a loan be made or a financial instrument issued and
 - (i) subject to section 31, the terms and conditions on which it may be made or issued, and
 - (ii) the security for the loan or financial instrument; or
- (b) that the application be rejected.

Approval or rejection by Board

(2) After receipt of a recommendation from the manager under subsection (1), the Board must, after considering the recommendation, the merits of the application and any further information,

- (a) approve the loan or financial instrument and specify
 - (i) subject to section 31, the terms and conditions on which it may be made or issued, and
 - (ii) the security for the loan or financial instrument; or
- (b) reject the application.

Approval or rejection by manager

(3) After considering the merits of an application for a loan or financial instrument for which the principal amount is no more than \$500,000, the manager must

- (a) approve the loan or financial instrument and specify
 - (i) subject to section 31, the terms and conditions on which it may be made or issued, and
 - (ii) the security for the loan or financial instrument; or
- (b) reject the application.

12. (1) Subsection 31(1) is repealed and replaced by

Terms and conditions

31. (1) Every loan made or financial instrument issued must be made or issued subject to the terms and conditions prescribed by regulation.

(2) Subsection 31(3) is repealed.

13. Subsection 32(1) and (2) are repealed and replaced by

Conditions applicant must meet

32. (1) An application must be rejected unless the Board or the manager considering it is satisfied

- (a) the statements in the application are truthful and accurate;
- (b) the applicant for a financial instrument can perform the work or supply the materials in respect of which the financial instrument would be issued; and
- (c) the principal and interest on the loan to be made will be repaid.

Grounds for rejection

(2) The Board or the manager considering an application must reject it if

- (a) the applicant is not eligible;
- (b) the making of the loan or issuance of the financial instrument is not likely to stimulate economic development and employment in Nunavut;
- (c) the purpose for which the loan is to be made or the financial instrument is to be issued is not, in the opinion of the Board or the manager, a viable business opportunity; or

- (d) it is for a loan and the amount of the loan exceeds 10 times the equity in the business enterprise, unless the Board or the manager considering the application is satisfied that special circumstances exist that justify waiving this requirement.

14. Section 33 is repealed and replaced by

Final decision

33. A decision of the Board under subsection 30(2) is final.

15. Section 34 is amended as follows:

Further information

34. ~~Where~~ If an application is rejected and the applicant has more information respecting the application or the applicant's financial circumstances have changed, the applicant may apply again under ~~subsection 27(1) or 28(1)~~ section 27 or 28.

16. (1) Subsection 35(1) is amended as follows:

Application to Board for review

35. (1) ~~Where~~ If an application is rejected by a ~~lending officer~~ or the manager, the applicant may apply to the Board for a review.

(2) Paragraphs 35(2)(a) and (b) are repealed and replaced by

- (a) confirm the decision of the manager; or
- (b) subject to the limitations set out in sections 31 and 32, approve the loan or financial instrument and specify
 - (i) subject to section 31, the terms and conditions on which it may be made or issued, and
 - (ii) the security for the loan or financial instrument.

17. Section 36 is repealed.

18. Section 37 is repealed and replaced by

Making loan

37. (1) Subject to subsection (3) and subsection 48(2), the Corporation must make a loan in accordance with the approval of the Board or the manager that is made in accordance with this Act and the regulations and must, at the time the loan is made,
- (a) take a promissory note and the security from the borrower that is specified by the Board or the manager; and
 - (b) enter into a written agreement with the borrower setting out the terms and conditions of the loan.

Financial Administration Act

(2) Despite the *Financial Administration Act*, sections 86 and 87 of that Act do not apply to financial instruments issued under this Act.

Limit

(3) A loan must not be made and a financial instrument must not be issued by the Corporation if it would cause the aggregate of the principal amounts of all loans made and financial instruments issued to the business enterprise or a related business enterprise to exceed \$5,000,000.

Discretion of Board

(4) For the purposes of subsection (3), the Board has sole discretion to determine whether business enterprises are related.

19. Section 38 is amended as follows:

Obligations of borrower

38. On receiving a loan or financial instrument, ~~a bond, a guaranteed loan or an indemnified bond~~, a borrower ~~shall~~ must

- (a) maintain books and accounting records in a form acceptable to the Board until the borrower has discharged all obligations under the loan or financial instrument, ~~bond, guaranteed loan or indemnified bond~~;
- (b) permit the manager or a person designated by the Board to have access to and to examine the books and accounting records at any reasonable time; and
- (c) submit financial statements to the Corporation within ~~90~~ 120 days of the borrower's financial year end.

20. Section 40 is repealed.

21. Section 41 is repealed and replaced by

Changes to terms and conditions of loans and financial instruments

41. (1) The Corporation may change the terms and conditions of a loan made or a financial instrument issued by the Corporation if

- (a) the borrower agrees;
- (b) the change is approved by
 - (i) the Board, if the Board approved the loan or financial instrument, or
 - (ii) the manager, if the manager approved the loan or financial instrument; and
- (c) the change would not be contrary to this Act or the regulations.

Meeting of Board

(2) For the purposes of this section, if the Board approved the loan or financial instrument, the Board must meet and consider the proposed change to the terms and conditions of a loan or financial instrument.

22. Section 42 is amended as follows:

Transfer of loan or financial instrument

42. A loan or financial instrument ~~bond~~ is not transferrable without the written approval of the Corporation, and any transfer without such approval is of no effect.

23. Subsection 45 is repealed and replaced by

Guarantees and indemnities

44.1. In sections 45 to 51, a reference to a guarantee or indemnity is a reference to a guarantee or indemnity made under this Act before the coming into force of this section.

Business Loans and Guarantees Fund

45. The Corporation must establish a fund to which the Corporation must credit

- (a) all payments of fees;
- (b) all repayments of principal, all moneys received in interest and all moneys realized on any security in respect of loans made, financial instruments issued, or guarantees or indemnities given under this Act; and
- (c) all moneys received or credited under sections 46 and 47.

24. The portion of paragraph 47(1)(b) preceding subparagraph (i) is repealed and replaced by

- (b) the principal amounts of all loans outstanding and all amounts paid under a guarantee, a financial instrument or an indemnity that have not been recovered at the time the loan is made,

25. (1) Paragraph 48(1)(a) is amended as follows:

- (a) for the purposes of making loans or honouring financial instruments ~~bonds~~, guarantees or indemnities;

(2) Subsection 48(2) is repealed and replaced by

Limit

(2) A loan must not be made and a financial instrument must not be issued under this Act if it would cause the aggregate of the principal amounts of all loans, financial instruments, guarantees and indemnities outstanding to exceed the assets in the fund at the time the loan is made or the financial instrument is issued.

Assets

(3) For the purpose of subsection (2), assets in the fund include the amount in the fund and the value of all outstanding loans.

26. Subsection 49(2) is repealed and replaced by

Repayment credit toward losses

(2) All repayments of principal, all moneys received in interest and all moneys realized on any security in respect of loans made, financial instruments issued, or guarantees or indemnities given under this Act must be credited to the fund firstly in respect of losses referred to in subsection (1).

27. The following is added after section 50:

Contents of annual report

50.1. The annual report of the Corporation under Part IX of the *Financial Administration Act* must include a specific category setting out the following information in respect of each business enterprise that the Corporation made new loans to or issued new financial instruments to in the financial year:

- (a) the name of the business enterprise;
- (b) the name of the owner or owners of the business enterprise as determined in accordance with the regulations;
- (c) the total amount of new loans made and new financial instruments issued to the business enterprise;
- (d) the name of the municipality or other place in which the business enterprise or its head office is located.

28. (1) Paragraphs 51(b) to (e) are repealed.

(2) Paragraph 51(f) is amended as follows:

- (f) prescribing the information to be included in an application and the manner of applying for a loan or financial instrument, ~~bond, guarantee or indemnity~~;

(3) Paragraphs 51(h) to (k) are amended as follows:

- (h) prescribing fees, or a manner of calculating fees, for application for a loan or financial instrument, ~~bond, guarantee or indemnity~~;
- (i) respecting applications to the Board ~~and the Minister~~ for review;
- (j) respecting the terms and conditions of loans and financial instruments, ~~bonds, guarantees and indemnities~~;
- (k) respecting the security that must be taken by the Corporation ~~where~~ when a loan is made ~~or by a financial institution where a guarantee given~~;

(4) Paragraphs 51(n) to (o) are amended as follows:

- (n) respecting information to be provided by a borrower who receives a loan or financial instrument ~~bond~~, by a financial institution that ~~receives~~ received a guarantee or by a bonding company that ~~receives~~ received an indemnity;
- (o) respecting procedures for the collection of loans that are in default and of any amount paid under a financial instrument bond, a guarantee or an indemnity and any costs that may be recoverable;

(5) Section 51 is amended by deleting "and" at the end of paragraph (q) and adding the following after paragraph (q):

- (q.1) prescribing, for the purposes of section 50.1, criteria for determining the owner or owners of a business enterprise; and

29. Sections 52 to 54 are repealed.

TRANSITIONAL

30. Section 15 of the Act as it read prior to the coming into force of this Act continues to apply with respect to information received prior to the coming into force of this Act.

31. A recommendation by the Board under paragraph 30(1)(a) of the Act as it read prior to the coming into force of this Act with respect to a loan or bond is deemed to be an approval of the application to which it related.

32. On the coming into force of this Act, any application for a guarantee or indemnity that has not been approved is deemed to be rejected without any right of appeal or review.

33. On the coming into force of this Act, all pending reviews under section 36 of the Act as it read prior to the coming into force of this Act are terminated and the application related to the review is deemed to be rejected without any right of appeal or review.

34. Section 40 of the Act as it read prior to the coming into force of this Act continues to apply with respect to guarantees and indemnities made prior to the coming into force of this Act.

35. For the purposes of section 41 of the Act, the Board may approve a change to a loan or financial instrument that was approved by the Minister prior to the coming into force of this Act.

36. The Corporation may change the terms and conditions of a guarantee or an indemnity made before the coming into force of this Act if

- (a) the financial institution or bonding company agrees;
- (b) the change is approved by

- (i) the Board, if the Board or the Minister approved the guarantee or indemnity, or
- (ii) the manager, in any other case; and
- (c) the change would not be contrary to the Act or its regulations as they read immediately prior to this Act coming into force.

37. All bonds provided in accordance with the Act as it read prior to the coming into force of this Act are deemed to have been validly provided, despite section 86 and 87 of the *Financial Administration Act*.

COMING INTO FORCE

- 38. This Act comes into force on the earlier of**
- (a) a day to be fixed by order of the Commissioner in Executive Council; and
 - (b) October 1, 2025.