

1990 BILL 221

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 221

EMPLOYEE INVESTMENT ACT

MR. JONSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 221
Mr. Jonson

BILL 221

1990

EMPLOYEE INVESTMENT ACT

(Assented to , 1990)

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

Interpretation

1(1) In this Act,

(a) "administrator" means the person designated by the
Provincial Treasurer to perform the duties of administrator
under this Act;

(b) "affiliate", where used to indicate a relationship between
corporations, means any corporation where one is the
subsidiary of the other, or both are subsidiaries of the same
corporation or each of them is controlled by the same person
or the same group of persons or one or more members of an
associated group of persons;

(c) "associate", where used to indicate a relationship with a
person, means

(i) a corporation of which the person owns, directly or
indirectly, shares carrying 10% or more of the voting
rights attached to all outstanding shares of the
corporation,

(ii) a partner of the person,

(iii) a participant in a joint venture with the person,

(iv) a trust or estate

(A) in which the person has, in the opinion of the

administrator, a substantial beneficial interest, or

(B) for which the person serves as trustee or in a similar capacity,

(v) a spouse, parent, grandparent, child, grandchild, brother or sister of the person, or

(vi) a parent, grandparent, child, grandchild, brother or sister of the spouse of the person residing in the same residence;

(d) "associated group of persons" means an associated group of persons as defined in the regulations;

(e) "constitution" means the memorandum and articles or other constitutional documents of a corporation;

(f) "debt obligation" includes a mortgage, bond, debenture, note, loan or similar obligation, whether secured or unsecured;

(g) "disposition" by an employee shareholder or an eligible shareholder does not include a transfer by any method of a share

(i) consequent on the shareholder's

(A) death,

(B) bankruptcy,

(C) permanent disability, or

(D) involuntary loss of employment,

(ii) to a trust that holds the share for the benefit of the shareholder, or

(iii) in any other prescribed circumstance;

(h) "eligible business" means a corporation that does not exceed such test, if any, as to size or extent of operation that may be prescribed;

(i) "eligible employee" means an individual who, at the time of subscribing for a share under this Act, is resident in Alberta

(i) is employed by the corporation that has registered an employee share ownership plan, or the predecessor or

affiliate of that corporation, on a continuing basis for an average of at least 20 hours each week,

(ii) is not a major shareholder of the corporation, and

(iii) meets other prescribed conditions,

(j) "eligible investment" means an investment permitted under section 15;

(k) "eligible investor" means an individual who, at the time of subscribing for a share under this Act, is resident in Alberta and

(i) is a member of an employee organization or is an eligible employee of the eligible business or an affiliate of the eligible business in which the employee venture capital corporation is restricted by its constitution to making investments,

(ii) is not a major shareholder of the employee venture capital corporation or the eligible business, and

(iii) meets other prescribed conditions;

(l) "eligible shareholder" means an eligible investor who owns shares purchased under an employee venture capital plan;

(m) "employee group" means those employees who have been certified as an employee group under section 25;

(n) "employee organization" means

(i) a trade union,

(ii) an association or federation of trade unions, or

(iii) a prescribed association of employees;

(o) "employee share ownership plan" means a plan containing the provisions referred to in section 4;

(p) "employee shareholder" means an employee who owns shares purchased under an employee share ownership plan;

(q) "employee venture capital corporation" means a corporation registered under section 8;

(r) "employee venture capital plan" means a plan containing

the provisions referred to in section 10;

(s) "equity capital" means the consideration in money received by a corporation for the corporation's issued equity shares;

(t) "equity share" means a share of a class of shares that

(i) carry voting rights under all circumstances,

(ii) are not restricted in their right to share in the profits of the corporation or in the division of the corporation's assets on dissolution or winding up, and

(iii) do not have any rights and restrictions prescribed in the regulations;

(u) "major shareholder" means, with respect to a corporation, a person who, together with his or her associates, owns, directly or indirectly, shares carrying 10% or more of the voting rights attached to all outstanding shares of the corporation or shares of the corporation carrying 10% or more of the right to share in the profits of the corporation or in the division of its assets on dissolution or winding up;

(v) "plan" means an employee share ownership plan or an employee venture capital plan;

(w) "share offering document" means a prospectus, offering memorandum or other material circulated in accordance with the *Securities Act* with the intent of obtaining subscriptions for the corporation's shares and, notwithstanding anything in that Act, must include at least the following information

(i) the number of shares to be offered,

(ii) the subscription price of the shares,

(iii) the period of time that the shares will be offered for subscription,

(iv) to whom the shares will be offered,

(v) any other prescribed information;

(x) "spouse" means a person who is

(i) married to another person, or

(ii) living with another person as husband or wife and

has lived as such for a continuous period of 6 months;

(y) "subsidiary" means a corporation that, in respect of another corporation, is controlled, either directly or indirectly, by that other corporation.

(2) For the purposes of this Act

(a) shares shall be deemed to be owned by an individual if they are beneficially owned by a corporation controlled by the individual or by an affiliate of that corporation;

(b) a corporation shall be deemed to own shares that are owned by its affiliates, and

(c) a shareholder shall be deemed to have purchased, held or disposed of shares that are purchased, held or disposed of by a trust where the shareholder has beneficial ownership of the shares.

(3) Where, under the definition of "affiliate", a person (the "first person") is an affiliate of another person, that other person is an affiliate of the first person.

(4) Where, under the definition of "associate", a person (the "first person") is an associate of another person, that other person is an associate of the first person.

(5) For the purposes of this Act

(a) a corporation shall be deemed to be controlled by a person or group of persons if

(i) shares of the corporation carrying more than 50% of the outstanding voting rights for the election of the directors are owned directly or indirectly by that person or group of persons, and

(ii) the voting rights carried by the shares referred to in subparagraph (i) are sufficient, if exercised, to elect a majority of the directors of the corporation, and

(b) a person or group of persons shall be deemed, other than in prescribed circumstances, to own shares that the person or group of persons would own following the exercise of

(i) an option, warrant or right, or

(ii) a conversion right that is attached to a debt

obligation or to a share of the corporation.

(6) For the purposes of this Act, where the expression "controlled, directly or indirectly in any manner," is used, a corporation shall be considered to be so controlled by another corporation, person or group of persons (the "controller") at any time where, at that time, the controller has any direct or indirect influence that, if exercised, would result in control in fact of the corporation except that, where the corporation and the controller are dealing with each other at arm's length and that influence is derived from a franchise, licence, lease, distribution, supply or management agreement or other similar agreement or arrangement, the main purpose of which is to govern the relationship between the corporation and the controller regarding the manner in which a business carried on by the corporation is to be conducted, the corporation shall not be considered to be controlled, directly or indirectly in any manner, by the controller by reason only of the agreement or arrangement.

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

PART 1

EMPLOYEE SHARE OWNERSHIP PLANS

Registration

2(1) A corporation that meets the criteria set out in section 3 may apply to have an employee share ownership plan registered under this Part by delivering to the administrator, in a form acceptable to the administrator, an application including

- (a) the financial statements of the corporation;
- (b) a copy of its constitution;
- (c) a copy of the employee share ownership plan; and
- (d) other information that the administrator may require in order to determine compliance with this Act and the regulations.

(2) The administrator shall register an employee share ownership plan, with conditions that the administrator considers appropriate, on being satisfied that

- (a) the corporation meets the criteria set out in section 3;
- (b) the plan complies with the spirit and intent of this Act and

the regulations; and

(c) any other prescribed conditions for the registration are met.

(3) Where the administrator registers an employee share ownership plan he or she shall issue a certificate of registration, and the plan shall be deemed to be registered under this Part on the date of registration contained in the certificate.

(4) Registration of an employee share ownership plan under this section constitutes approval, as at the date of registration, for the corporation to raise the amount of equity capital referred to in the plan or any other amount that the administrator specifies.

Criteria for
corporation
eligibility

3 The criteria referred to in section 2 for eligibility of a corporation are that the corporation

(a) is incorporated under the laws of Alberta or of Canada or, being a corporation incorporated in any other province of Canada, is registered to carry on business in Alberta;

(b) pays not less than 25% of the prescribed wages and salaries, calculated in the prescribed manner, of the corporation to employees who regularly work within Alberta;

(c) together with its affiliates, has not more than \$500 million in total assets calculated in the prescribed manner;

(d) has not, during the preceding 2 years, raised more than \$5 million in equity capital under

(i) any registered employee share ownership plan,

(ii) any other share ownership plan that substantially meets the requirements under section 4(1)(c), (d)(i) and (h), or

(iii) combinations of share ownership plans referred to in subparagraph (i) or (ii), and

(e) meets other prescribed conditions.

Conditions for
plan

4(1) Every employee share ownership plan must contain or make provision for at least the following

(a) the estimated number of eligible employees proposed to be covered by the plan;

(b) the amount of equity capital to be raised under the plan, which shall not exceed \$5 million in any 2 year period;

(c) that every eligible employee who has been employed by the corporation or its predecessor affiliate for at least 6 months has an equal right to purchase shares under the plan or a pro rata right to purchase shares, which takes into account length of service;

(d) subject to section 35(5), that the shares to be acquired under the plan

(i) are equity shares,

(ii) are of only one class without series and have never previously been issued,

(iii) will only be issued from the treasury of the corporation on being fully paid for in cash,

(iv) will, immediately following their acquisition, be registered in the name of each employee that purchases them or in the name of a trustee, if the shares are held by the trustee for the benefit of an employee, and will be held, for 3 years from the date of the purchase, in the custody of an authorized depository and under such terms and conditions as are approved by the administrator, and

(v) do not have any rights or restrictions prohibited by regulation;

(e) an investment confirmation, to be issued to each new shareholder within 30 days of share registration, setting out at least the following:

(i) the number of shares acquired,

(ii) the price paid per share,

(iii) the total amount paid,

(iv) the name, address, telephone number and contact person for the authorized depository;

(v) the procedure for obtaining the tax credit certificate under this Act,

(vi) any other prescribed information;

- (f) a method of establishing the value for the shares by
 - (i) an independent opinion from a qualified person,
 - (ii) a formula referencing financial information of the corporation, or
 - (iii) a formula referencing the trading value of a class of shares trading on a public stock exchange of the corporation,

that applies consistently over the life of the plan, does not provide for a premium for control or discount of minority interests and is computed without reference to the tax credit provided for under the *Alberta Corporate Income Tax Act* or the *Income Tax Act* (Canada);

- (g) that the corporation shall provide to each employee shareholder at least annually

- (i) the value established under paragraph (f), and the basis on which the value is established, and

- (ii) disclosure with respect to major decisions of the corporation that materially affect that value;

- (h) that if a shareholder wishes to sell all or a portion of the shares a shares acquired under the plan and the shares are not listed on a Canadian stock exchange the corporation shall redeem the shares unless

- (i) the shares are bought by a party dealing at arm's length with the shareholder, or

- (ii) the shares are acquired by other eligible employees;

- (i) that shares redeemed or transferred under paragraph (h) will be at a price at least equal to the value established under paragraph (f);

- (j) that share transactions under paragraph (h) may be governed by limits set out in the plan if those limits

- (i) are based on a reasonable test of ability to pay, and

- (ii) give priority to holders in the following order: death, retirement, involuntary loss of employment or other reason;

(k) a share offering document;

(l) the use of the equity capital where the use will be contrary to section 6(a);

(m) such other requirements as may be prescribed.

(2) A plan shall not be altered without the prior approval of the administrator and the consent of a majority of the employee shareholders.

Additional equity
capital

5(1) Where a corporation proposes to raise equity capital under an employee share ownership plan in addition to the equity capital approved under section 2(4), it shall apply to the administrator who shall approve that additional equity capital, subject to any conditions the administrator considers appropriate, if the administrator is satisfied that

(a) the corporation meets the criteria referred to in section 3;

(b) the plan is being implemented in accordance with this Act and the regulations; and

(c) the equity capital approval would not result in the total aggregate of the tax credits exceeding any limits prescribed under section 28.

(2) An approval under subsection (1) shall be deemed to be an approved change to the plan.

Use of funds

6 A corporation shall not use funds received from the approved issue of shares under an employee share ownership plan for which tax credits under the *Alberta Corporate Income Tax Act* have been or will be claimed

(a) unless otherwise specifically provided for in the plan; for

(i) lending, other than in the ordinary course of business,

(ii) acquiring securities, other than in the ordinary course of business,

(iii) funding of all or part of the purchase by the corporation of all or a substantial portion of the assets of an existing proprietorship, partnership, joint venture, trust or corporation,

(iv) making any payment, including a payment for the

purchase of goods or services and the payment of dividends and the repayment of shareholder debt, to a shareholder, director or officer of the corporation or any of its affiliates,

(v) investing in land, except where the use of the land is incidental or ancillary to the activities of the corporation, and

(vi) the purchase or redemption of previously issued shares of the corporation or one of its affiliates,

(b) for purchasing services or assets provided by the Crown or an agency or corporation of the Crown, where

(i) those services or assets are to be used in all or in part in a business or activity that is the same or similar to the activity previously carried on by the Crown or the agency or corporation of the Crown, and

(ii) the corporation has received, either directly or indirectly, any financial assistance from any government, municipality or public authority with respect to the acquisition of those services or assets;

(c) as part of a transaction or series of transactions directly or indirectly involving the funding of all or part of the purchase by the corporation of any services or assets at a price that is greater than the fair market value of the services or assets purchased; or

(d) for other prescribed purposes.

Tax credit

7(1)A corporation shall, on behalf of each of its eligible employees, apply to the administrator for a tax credit certificate entitling each of those eligible employees to a tax credit under section 8.8 of the *Income Tax Act*, equal to 20% of the amount received by the corporation, in that calendar year or within 60 days immediately following that calendar year, for shares issued to those eligible employees by the corporation under a registered employee share ownership plan less the amount of any tax credit previously allowed with respect to any shares of the corporation disposed of by the employee shareholder within the immediately preceding 2 years.

(2) On receipt of an application under subsection (1), the administrator shall, subject to subsection (3), following the approval of the Provincial Treasurer and in accordance with section 26.7 of the *Alberta Corporate Income Tax Act* issue a tax

credit certificate in the amount referred to in subsection (1), unless the administrator considers that the corporation or its directors, officers or shareholders are conducting the business or affairs of the corporation in a manner that is contrary to the spirit and intent of this Act whether or not there has been a contravention of this Act or the regulations.

(3) The administrator shall not issue a tax credit certificate under subsection (2) unless the administrator is satisfied that

(a) the corporation and its eligible employees are complying with a registered employee share ownership plan and any conditions pertaining to it;

(b) the shares have been acquired in accordance with a registered plan;

(c) other than where prescribed, the shares do not constitute a type of security that entitles the holder, in respect of the acquisition of those shares,

(i) to claim a tax credit under the *Alberta Corporate Income Tax Act* or the *Income Tax Act* (Canada), other than under section 26.7 of the *Alberta Corporate Income Tax Act* or section 127.4 of the *Income Tax Act* (Canada), against tax payable,

(ii) to claim a deduction from income under the *Alberta Corporate Income Tax Act* or the *Income Tax Act* (Canada), or

(iii) to receive any other financial assistance from any government, municipality or public authority;

(d) the amount of the entitlement under subsection (1) takes into account any shares of the corporation disposed of by the employee shareholder within the immediately preceding 2 years;

(e) no tax credit has been previously allowed for those shares under the *Alberta Corporate Income Tax Act* or the *Income Tax Act* (Canada);

(f) the sum of the shareholder's aggregate tax credits allowed in respect of all previous years under section 26.7 of the *Alberta Corporate Income Tax Act* and the amount of the entitlement in respect of which the tax credit certificate is now being applied for is \$10 000 or less;

(g) the sum of the shareholder's aggregate entitlements in respect of all tax credit certificates applied for in the year is \$2,000 or less; and

(h) any other prescribed conditions have been complied with.

PART 2

EMPLOYEE VENTURE CAPITAL PLANS

Registration

8(1) A corporation that meets the criteria set out in section 9 may apply for registration under this Part by delivering to the administrator, in a form acceptable to the administrator, an application including

(a) the financial statements of the corporation;

(b) a copy of its constitution;

(c) a copy of the employee venture capital plan, and

(d) other information that the administrator may require in order to determine compliance with this Act and the regulations.

(2) The administrator shall register the corporation, with conditions that the administrator considers appropriate, on being satisfied that

(a) the corporation meets the criteria set out in section 9;

(b) the employee venture capital plan complies with the spirit and intent of this Act and the regulations; and

(c) any other prescribed conditions for the registration are met.

(3) Where the administrator registers a corporation, he or she shall issue a certificate of registration, and the employee venture capital corporation and employee venture capital plan shall be deemed to be registered under this Part on the date of registration contained in the certificate.

(4) Registration of an employee venture capital corporation under this section constitutes approval, as at the date of registration, for the employee venture capital corporation to raise the amount of equity capital referred to in the plan or any other amount that the administrator specifies.

Criteria for
corporation
eligibility

9 The criteria referred to in section 8 for eligibility of a corporation for registration as an employee venture capital corporation are that the corporation

- (a) is incorporated under the laws of Alberta;
- (b) has a name that includes "(EVCC)";
- (c) has never previously carried on business other than business related to obtaining registration under this Part;
- (d) has, or will have immediately after registration and thereafter, equity capital of at least \$25 000;
- (e) has authorized capital consisting of shares without par value;
- (f) has a constitution that
 - (i) restricts the business of the corporation to
 - (A) making investments permitted under this Act and providing business expertise, managerial expertise or financial support to eligible businesses in which the employee venture capital corporation has made or proposes to make an eligible investment, and
 - (B) providing information to and educating employees as to the role of capital in business, the value of equity investments to an employee and the rights and obligations of corporations and their shareholders,
 - (ii) restricts the issue of the shares to eligible investors, and
 - (iii) prohibits the corporation from lending money, guaranteeing loans or providing other financial assistance to
 - (A) its shareholders, or
 - (B) any employee organization, and
- (g) meets other prescribed conditions.

Conditions for
plan

10(1) Every employee venture capital plan must contain or make provision for at least the following

- (a) the estimated number of eligible investors proposed to be covered by the plan;
- (b) the amount of equity capital to be raised under the plan;
- (c) that every eligible investor who has been a member of an employee organization for at least 6 months has an equal right to purchase shares under the plan or a pro rata right to purchase shares, which takes into account length of service;
- (d) that the shares to be issued under the plan
 - (i) are equity shares,
 - (ii) are of only one class without series and have never previously been issued,
 - (iii) will only be issued from the treasury of the corporation on being fully paid for in cash,
 - (iv) will, immediately following their issue, be registered in the name of each shareholder that purchases them or in the name of a trustee, if the shares are held by the trustee for the benefit of a shareholder, and
 - (v) do not have any rights or restrictions prohibited by regulation;
- (e) an investment confirmation, to be issued to each new shareholder within 30 days of share registration, setting out at least the following:
 - (i) the number of shares acquired,
 - (ii) the price paid per share,
 - (iii) the total amount paid,
 - (iv) the procedure for obtaining the tax credit certificate under this Act,
 - (v) any other prescribed information;
- (f) a method of establishing the value for the shares by
 - (i) an independent opinion from a qualified person, or
 - (ii) a formula referencing financial information of the

corporation, that applies consistently over the life of the plan, does not provide for a premium for control or discount of minority interests and is computed without reference to the tax credit provided for under the *Alberta Corporate Income Tax Act* or the *Income Tax Act* (Canada);

(g) that the corporation shall provide to each shareholder at least annually

(i) the value established under paragraph (f), and the basis on which the value is established, and

(ii) disclosure with respect to major decisions of the corporation that materially affect that value;

(h) that if a shareholder wishes to sell all or a portion of the shares acquired under the plan and the shares are not listed on a Canadian stock exchange the corporation shall redeem the shares unless

(i) the shares are bought by a party dealing at arm's length with the shareholder, or

(ii) the shares are acquired by other eligible investors;

(i) that shares redeemed or transferred under paragraph (h) will be at a price at least equal to the value established under paragraph (f);

(j) that share transactions under paragraph (h) may be governed by limits set out in the plan if those limits

(i) are based on a reasonable test of ability to pay, and

(ii) give priority to holders in the following order: death, retirement, involuntary loss of employment or other reason;

(k) a share offering document;

(l) an investment plan including

(i) the corporation's investment policy and philosophy, and

(ii) if known,

(A) the names of the eligible businesses in which the

corporation intends to invest,

(B) the amount and timing of the intended investment, and

(C) any special conditions or rights to be associated with the equity shares to be acquired;

(m) the criteria under which persons subscribing for shares will qualify as eligible investors;

(n) such other requirements as may be prescribed.

(2) An employee venture capital plan shall not be altered without the prior approval of the administrator and the consent of a majority of the eligible shareholders.

Place of business

11 An employee venture capital corporation shall, within 30 days after being registered, establish a place of business in Alberta and shall afterwards maintain a place of business in Alberta.

Limits on equity capital

12(1) The equity capital of an employee venture capital corporation, including the equity capital referred to in section 14, shall not exceed

(a) \$5 million if it is not a reporting issuer as defined in the *Securities Act*, or

(b) \$20 million if it is a reporting issuer as so defined.

(2) Where the Lieutenant Governor in Council considers it to be in the public interest, the Lieutenant Governor in Council may by order and with or without conditions, in a particular case, exempt an employee venture capital corporation from the limits of equity capital set out in subsection (1) and specify other limits that shall apply in that particular case.

Minimum investment requirements

13(1) Subject to subsection (2), an employee venture capital corporation shall, within 18 months after the date of an approval under section 8(4) or 14, have invested in eligible investments at least an amount equal to 40% of the amount of equity capital that is, under sections 8(4) and 14, approved to be raised, and the employee venture capital corporation shall afterwards keep at least that amount invested in eligible investments.

(2) An employee venture capital corporation shall, within 30 months after the date of an approval under section 8(4) or 14, have invested in eligible investments at least an amount equal to 80% of the amount of equity capital that is, under sections 8(4)

and 14, approved to be raised, and the employee venture capital corporation shall afterwards keep at least that amount invested in eligible investments.

(3) For the purposes of subsections (1) and (2), the amount invested in eligible investments shall be determined using the cost, determined in the prescribed manner, of the investment.

(4) Where, as a result of the disposition of an eligible investment, an employee venture capital corporation no longer complies with subsection (1) or (2), the administrator may, with or without conditions, allow the employee venture capital corporation a period of 6 months in which to reinvest in order to again comply with those subsections.

Additional equity
capital

14(1) Where a corporation proposes to raise equity capital under an employee venture capital plan in addition to the capital approved under section 8(4) it shall apply to the administrator who shall approve that additional capital, subject to any conditions the administrator considers appropriate if the administrator is satisfied that

- (a) the corporation meets the criteria referred to in section 9;
- (b) the plan is being implemented in accordance with this Act and the regulations; and
- (c) the equity capital approval would not result in the total aggregate of the tax credits exceeding any limits prescribed under section 28.

(2) An approval under subsection (1) shall be deemed to be an approved change to the employee venture capital plan.

Investment in
eligible businesses

15(1) An employee venture capital corporation may make an investment in an eligible business if each of the following requirements is fulfilled

- (a) not less than 50% of the prescribed wages and salaries, calculated in the prescribed manner, of the eligible business are paid to employees who regularly work within Alberta;
- (b) the eligible business together with its affiliates has less than \$35 million in total assets calculated in the prescribed manner;
- (c) the eligible business is or will be substantially engaged, determined in the prescribed manner, in Alberta in any one or more of the following activities

- (i) manufacturing and processing;
 - (ii) research and development;
 - (iii) tourism;
 - (iv) aquaculture;
 - (v) any other business activity that is prescribed;
- (d) subject to section 35(5), the investment consists of or will consist of the acquisition of equity shares, issued for the purpose of raising additional equity capital, either
- (i) directly from the eligible business, or
 - (ii) in prescribed circumstances from an agent or broker acting as an underwriter for the eligible business;
- (e) the investment is not and will not be prohibited under sections 16 to 19;
- (f) in the case of an employee venture capital corporation whose constitution restricts the issue of the equity shares to employees of a particular eligible business only or an affiliate of it that is itself an eligible business, the employee venture capital corporation shall not make or hold an eligible investment other than in that eligible business or that affiliate.

(2) Notwithstanding subsection (1)(b), where the administrator is satisfied that the eligible business and its affiliate do not have any agreement, commitment or understanding to conduct any business in concert, then, in calculating the total assets under subsection (1)(b), the administrator shall not, in prescribed circumstances, include the assets of the affiliate of the eligible business.

Investment for
certain purposes
prohibited

16 An employee venture capital corporation shall not use funds raised through the issue of equity shares with respect to which tax credits have been or are entitled to be claimed under section 26.7 of the *Alberta Corporate Income Tax Act* to make or hold an investment in an eligible business where the proceeds of that investment are directly or indirectly used or intended to be used, in whole or in part, by the eligible business

- (a) for lending;
- (b) for acquiring securities other than under a proposal accepted under section 17(2);

(c) for making any payment with respect to the purchase of goods or services from, the payment of dividends to or the repayment of shareholder debt to a director, officer or shareholder of the employee venture capital corporation or from or to an associate of a director, officer or major shareholder of the employee venture capital corporation;

(d) for purchasing services or assets provided by the Crown or an agency or corporation of the Crown, where

(i) those services or assets are to be used in all or in part in a business or activity that is the same or similar to the activity previously carried on by the Crown or the agency or corporation of the Crown, and

(ii) the corporation has received, either directly or indirectly, any financial assistance from any government, municipality or public authority with respect to the acquisition of those services or assets;

(e) as part of a transaction or series of transactions directly or indirectly involving, other than as part of a proposal accepted under section 17(2)

(i) the purchase or redemption of previously issued shares of the eligible business or one of its affiliates,

(ii) the retirement of any part of a liability to a shareholder of the eligible business or one of its affiliates,

(iii) the payment of dividends, or

(iv) the funding of all or part of the purchase by the eligible business of all or a substantial portion of the assets of an existing proprietorship, partnership, joint venture, trust or corporation,

(f) for the funding of all or part of the purchase by the eligible business of any services or assets at a price that is greater than the fair market value of the services or assets purchased; or

(g) for other prescribed purposes.

Control of eligible
business

17(1) Subject to subsection (2), an employee venture capital corporation that is not restricted by its constitution to acquiring shares in a particular eligible business shall not make or hold an investment in an eligible business where

(a) 50% of the shares carrying votes for the election of directors of the eligible business are owned, directly or indirectly, by; or

(b) the eligible business is controlled, directly or indirectly, in any manner; by

the employee venture capital corporation or it and any other employee venture capital corporation or venture capital corporation, either alone or in conjunction with one or more of its or their

(c) associates or affiliates;

(d) shareholders or their associates or affiliates;

(e) directors or their associates; or

(f) officers or their associates.

(2) Subsection (1) does not apply to the making or holding of an investment in an eligible business where the administrator is satisfied that

(a) the investment will result in substantial employee participation in the

(i) start up and operation of a new business, or

(ii) restructuring of ownership of an existing business to facilitate transfer of control from a person or a group of persons where the restructuring will result in widely dispersed ownership by persons resident in Canada, or

(b) the administrator is satisfied that the eligible business is or will be in financial difficulty.

(3) The administrator may set conditions with respect to the making or holding of an investment under subsection (2).

Non-arm's length
investments
prohibited

18(1) An employee venture capital corporation shall not make or hold an investment in an eligible business where any of the shares of the employee venture capital corporation are owned by a person who is, or was at any time during the 2 years immediately preceding the investment,

(a) a major shareholder of the eligible business;

(b) an associate of a major shareholder of the eligible business;

(c) a voting trust where the trustee votes shares of the eligible business; or

(d) the eligible business or an associate or affiliate of the eligible business.

(2) An employee venture capital corporation shall not make or hold an investment in an eligible business where the eligible business or an associate, affiliate, director, officer or shareholder of the eligible 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 a person who is, or was at any time during the 2 years immediately preceding the investment,

(a) the employee venture capital corporation;

(b) an associate or affiliate of the employee venture capital corporation;

(c) a director, officer or major shareholder of the employee venture capital corporation; or

(d) a member of a group of persons that controls the employee venture capital corporation.

Aggregate investment

19 An employee venture capital corporation shall not make or hold an investment in an eligible business where, as a result of that investment, the aggregate of all amounts received by that eligible business from the employee venture capital corporation and any other employee venture capital corporations, directly or indirectly, would exceed \$5 million within a 2 year period.

Action to be taken where investment becomes prohibited

20 Where an investment of an employee venture capital corporation becomes prohibited under sections 16 to 19, the employee venture capital corporation shall, within 6 months after the investment became prohibited, dispose of that investment unless, within the 6 month period, the circumstances that caused the investment to become prohibited change so that the investment is no longer prohibited under those sections.

Changes in eligibility

21(1) Where an eligible business in which an employee venture capital corporation has made an eligible investment and where that eligible business, within 5 years of the date of the last investment by the employee venture capital corporation, no longer conforms to section 15(1)(a) and (c), the employee venture capital

corporation shall, within 6 months, dispose of that investment unless, within the 6 month period, the circumstances change so that the eligible business again conforms to section 15(1)(a) and (c).

Permitted
investments and
authorized
expenses

22(1) An employee venture capital corporation shall not make or hold any investments other than investments in

- (a) eligible investments;
- (b) liquid reserves on deposit in Alberta at a savings institution or with a loan company that has been approved under the *Trust Companies Act*;
- (c) a security, as defined in the *Securities Act*, of an eligible business whose shares qualify as an eligible investment, which security is issued or granted directly to the employee venture capital corporation by the eligible business;
- (d) the investment protection account under section 23;
- (e) securities, as defined by the *Trustee Act*, that are issued by the government or the government of Canada; or
- (f) any other prescribed investment.

(2) The annual expenses of an employee venture capital corporation shall not exceed a prescribed amount, determined in the prescribed manner.

Investment
protection account

23(1) At the time of each receipt of equity capital for which a tax credit certificate will be applied for under this Act or on the disposition of an equity share that is or was an eligible investment, an employee venture capital corporation shall pay or cause to be paid into an investment protection account that meets the criteria and complies with the conditions established by the administrator an amount equal to 40% of the consideration received by the employee venture capital corporation in respect of the equity shares, unless the administrator is satisfied that the employee venture capital corporation will immediately make an eligible investment equal to or greater than the consideration received.

(2) Where an employee venture capital corporation has made or proposes to immediately make an investment and the administrator is satisfied that

- (a) the investment qualifies as an eligible investment; and
- (b) the eligible business and the employee venture capital

corporation and their directors, officers and shareholders are conducting their business and affairs in accordance with the spirit and intent of this Act,

the administrator shall authorize payment out of the investment protection account to the employee venture capital corporation or its nominee, with or without conditions the administrator may require, of an amount equal to the least of the following

(c) the amount the employee venture capital corporation has requested to be released from the investment protection account;

(d) 50% of the amount paid or to be paid for the eligible investment;

(e) the amount in the account.

(3) Where

(a) the administrator certifies that money is payable to the Crown under section 29 or 30; and

(b) there is money in the investment protection account to pay all or part of the amount payable,

the money shall be paid to the Provincial Treasurer.

(4) Income earned on money in the investment protection account is payable to the employee venture capital corporation.

(5) Notwithstanding subsection (4), where

(a) the registration of an employee venture capital corporation is revoked under section 33; or

(b) an employee venture capital corporation fails to comply with section 13,

the administrator may require the corporation to pay or cause to be paid to the Crown all or part of the income earned in respect of the investment protection account.

(6) Where an employee venture capital corporation acquires shares of its own issue and the administrator is satisfied that no tax credits under section 26.7 of the *Alberta Corporate Income Tax Act* or section 127.4 of the *Income Tax Act* (Canada) have been or will be issued in respect of those shares, the administrator may authorize an amount equal to the lesser of

(a) 40% of the amount for which the shares acquired were originally issued; or

(b) the amount deposited in the investment protection account in respect of the shares acquired

to be paid out of the investment protection account to the employee venture capital corporation or its nominee.

Tax credit

24(1) An employee venture capital corporation shall, on behalf of each of its eligible investors, apply to the administrator for a tax credit certificate entitling each of those eligible investors to a tax credit under section 26.7 of the *Alberta Corporate Income Tax Act*, equal to 20% of the amount received by the corporation, in that calendar year or within 60 days immediately following that calendar year, for shares issued to those eligible investors by the corporation under a registered employee venture capital plan.

(2) On receipt of an application under subsection (1), the administrator shall, subject to subsection (3), following the approval of the Provincial Treasurer and in accordance with section 26.7 of the *Alberta Corporate Income Tax Act* issue a tax credit certificate in the amount referred to in subsection (1), unless the administrator considers that the corporation or its directors, officers or shareholders are conducting the business or affairs of the corporation in a manner that is contrary to the spirit and intent of this Act whether or not there has been a contravention of this Act or the regulations.

(3) The administrator shall not issue a tax credit certificate under subsection (2) unless the administrator is satisfied that

(a) the corporation and its eligible investors are complying with a registered employee venture capital plan and any conditions pertaining to it;

(b) the shares have been acquired in accordance with a registered plan;

(c) other than where prescribed the shares do not constitute a type of security that entitles the holder, in respect of the acquisition of those shares,

(i) to claim a tax credit under the *Alberta Corporate Income Tax Act* or the *Income Tax Act* (Canada), other than under section 26.7 of the *Alberta Corporate Income Tax Act* or section 127.4 of the *Income Tax Act* (Canada), against tax payable,

(ii) to claim a deduction from income under the *Alberta Corporate Income Tax Act* or the *Income Tax Act* (Canada), or

(iii) to receive any other financial assistance from any government, municipality or public authority;

(d) no tax credit has been previously allowed for those shares under the *Alberta Corporate Income Tax Act* or the *Income Tax Act* (Canada);

(e) the sum of the shareholder's aggregate tax credits allowed in respect of all previous years under section 26.7 of the *Alberta Corporate Income Tax Act* and the amount of the entitlement in respect of which the tax credit is now being applied for is \$10 000 or less;

(f) the sum of the shareholder's aggregate entitlements in respect of all tax credit certificates applied for in the year is \$2 000 or less; and

(g) any other prescribed conditions have been complied with.

PART 3

GENERAL

Certification of
employee group

25(1) A group of employees who the administrator considers are or will be eligible investors or eligible employees may apply to the administrator for certification as an employee group for the purposes of this Act.

(2) The administrator may certify, with or without conditions, not more than one employee group with respect to each employee share ownership plan or employee venture capital plan.

Cost sharing

26(1) A corporation that meets the requirements of section 3 or 15(1)(a) to (e) and which has not more than 150 employees, calculated in the prescribed manner, and an employee group, may each apply in a form and manner satisfactory to the administrator for reimbursement, in accordance with subsection (2), of their costs relating to the negotiation, evaluation and implementation of an employee share ownership plan or employee venture capital plan.

(2) Where the administrator approves an application under subsection (1), the government shall reimburse the corporation and the employee group for 50% of their respective costs up to a

prescribed maximum amount, if the administrator is satisfied that

(a) the corporation and the employee group are complying with the spirit and intent of the Act; and

(b) the costs incurred comply with any prescribed terms and conditions.

(3) Only one application for each corporation and employee group may be approved by the administrator in any 2 year period.

The register

27(1) The administrator shall maintain a register containing the information required by subsection (2), that shall be open for public inspection during normal business hours at places in Alberta determined by the administrator.

(2) The register shall contain the following information

(a) the name and registered office of each corporation that caused a plan to be registered and the place at which all documents, other than documents containing financial information of the corporation, pertaining to the plan may be examined;

(b) the date that the plan was registered;

(c) a contact name and address for any employee group associated with the plan if any;

(d) other information that may be prescribed.

Annual maximum
tax credit

28(1) The Lieutenant Governor in Council may, in respect of any year, prescribe an amount to be known as the annual maximum employee investment tax credit.

(2) The administrator shall register a plan only where he or she is satisfied that the amounts that will be deductible or deducted under section 26.7 of the *Alberta Corporate Income Tax Act* during a particular year will not exceed the annual maximum employee investment tax credit for that year.

Repayment of tax
credit - sale of
shares

29(1) Where a person receives, directly or indirectly, the benefit of all or part of a tax credit in respect of which the person is not entitled, the amount of the benefit is payable by that person to the Provincial Treasurer.

(2) A person to whom a tax credit has been allowed and who disposes of the beneficial interest

(a) in respect of shares acquired under an employee share ownership plan within 3 years; or

(b) in respect of shares acquired under an employee venture capital plan within 5 years

from the date the shares were acquired, shall repay or cause to be repaid to the Provincial Treasurer

(c) an amount equal to the tax credits allowed under section 26.7 of the *Alberta Corporate Income Tax Act* and section 127.4 of the *Income Tax Act* (Canada), in respect of those shares; or

(d) a lesser amount determined under the regulations in prescribed circumstances.

(3) A person who acquires the beneficial ownership in the shares pursuant to a disposition referred to in subsection (2) is jointly and severally liable with the persons referred to in subsections (2) and (4) to make the repayment referred to in subsection (2).

(4) Where the person who acquires the shares or the beneficial ownership in the shares pursuant to a disposition referred to in subsection (2) is an associate or an affiliate of the corporation whose shares are being disposed of, that corporation is jointly and severally liable with the persons referred to in subsections (2) and (3) to make the repayment referred to in subsection (2).

Third party
liability

30(1) A director or officer of the corporation, a member of a group of persons that controls the corporation or a shareholder who controls the corporation who provides information that

(a) the person knew or ought to have known was false or misleading at the time of providing the information; and

(b) formed in whole or in part the basis for which a tax credit certificate was issued under this Act

is jointly and severally liable with a person from whom the repayment is due under section 29(1).

(2) A director or officer of the corporation, a member of a group of persons that controls the corporation or a shareholder who controls the corporation who authorizes, permits or acquiesces in a transaction or series of transactions or events that the person knew or ought to have known at the time of authorization, permission or acquiescence would render a corporation incapable of making a payment under section 23(5) is jointly and severally liable with the corporation for the amount of the repayment.

(3) A director or officer of the corporation, a member of a group of persons that controls the corporation or a shareholder who controls the corporation who authorizes, permits or acquiesces in a transaction or series of transactions or events that result in the acquisition of a person's shares by the corporation or an associate or affiliate of the corporation is jointly and severally liable with the persons referred to in section 29(3) and (4) for the amount of the repayment owing.

Reporting
requirements

31(1) Within 180 days after the end of each of the corporation's fiscal years commencing after the end of the first fiscal year in which a plan is registered under section 2 or 8, as the case may be, the corporation that applied for registration shall prepare and file with the administration an annual return setting out the information required by the regulations.

(2) Unless otherwise ordered by the administrator, subsection (1) does not apply

(a) in the case of a corporation that has registered an employee share ownership plan, after 3 years have elapsed since the date of release of all shares held in custody under section 4; or

(b) in the case of an employee venture capital corporation, after the fifth year following the payment of all funds from the investment protection account under section 23.

Keeping of records

32(1) Each corporation that has had a plan registered and each employee group shall maintain records in such form and containing such information as the administrator considers necessary to determine that this Act and the regulations are being complied with.

(2) The corporation shall keep the records at its record office, or at such other place in Alberta that is approved by the administrator.

Revocation and
suspension of
plans

33(1) The administrator may suspend, for a period not exceeding 3 months, or revoke the registration of a plan or an employee venture capital corporation if

(a) the registration of the plan was obtained through fraud or through giving of false or misleading information by the corporation, employee group or anyone associated with the plan;

(b) the corporation fails to comply with this Act, the

regulations or the plan, whether or not the failure constitutes an offence; or

(c) the administrator considers that the corporation or its directors, officers or shareholders are conducting the business or affairs of the corporation in a manner that is contrary to the spirit and intent of this Act and the regulations or the plan, whether or not there has been a contravention of this Act, the regulations or the plan.

(2) The administrator shall not revoke a registration without first notifying by registered mail his or her intent to the corporation that registered the plan and giving it, its representative and other persons that would be affected by the revocation the opportunity of making comments and, if required, being heard.

(3) Where a plan has been suspended under subsection (1), but the administrator, following a review, considers that the plan is being conducted in a manner that is consistent with the spirit and intent of this Act, the regulations and the plan, he or she may remove the suspension, either generally or subject to the conditions that he or she considers appropriate.

(4) Notwithstanding subsection (2), the administrator may revoke the registration of

(a) an employee share ownership plan, if the corporation that registered the plan and a majority of the employee shareholders request the revocation; or

(b) an employee venture capital corporation, if the corporation requests the revocation.

Powers of
investigation

34(1) For the purpose of ensuring that this Act and the regulations are being complied with, and for the proper administration of this Act and the regulations, the administrator, or other person authorized by him, may

(a) examine the records of or pertaining to a corporation that has registered a plan, the affiliates of the corporation, a person who is or was a shareholder of the corporation or an employee group, at all reasonable times, and demand the production of the records from any person having custody of them and may make copies of any record which he or she is entitled to examine;

(b) enter the premises of the corporation, its affiliates, its directors and its officers and of a person who is or was a shareholder to make the examination referred to in paragraph

(a); and

(c) inquire into any matter considered relevant to the registration of plans and the continuation of registered plans or into any matter the administrator considers necessary or appropriate for the administration of this Act.

(2) The administrator may by order appoint a person to make whatever investigation the administrator considers appropriate for the administration of this Act and in the order shall determine the scope of the investigation.

(3) Sections 127(2) to (5) and 128 to 130 of the *Securities Act* apply for the purpose of this section.

General provisions

35(1) Where the administrator does not register a plan or a corporation, or where the administrator does not approve additional equity capital, issue a tax credit certificate or authorize a payment under this Act, for which application is made, within 45 days after receipt of the application, the administrator shall be deemed to have refused it.

(2) A calculation or determination under this Act or the regulations may be based on projections that the administrator considers to be appropriate.

(3) An amount required to be paid to the Provincial Treasurer under this Act is a debt due to the Crown.

(4) Where a person does not comply with this Act or the regulations but the administrator considers that the person is carrying out his or her business and affairs in a manner consistent with the spirit and intent of this Act and the regulations, the administrator may do all or any of the following

(a) permit registration of a corporation or plan;

(b) for any time that the administrator considers appropriate, refrain from revoking the registration of the corporation or plan;

(c) issue a tax credit certificate under section 7 or 24 or approve a payment under section 26;

(d) reduce the amount that would otherwise be required to be deposited into the investment protection account referred to in section 23.

(5) Where the administrator is satisfied that an investment will

result in substantial employee participation in the restructuring of ownership of an existing business

(a) to facilitate transfer of control from a person or a group of persons where the restructuring will result in widely dispersed ownership by persons resident in Canada; or

(b) where the business is or will be in financial difficulty

the administrator may, with or without conditions, order,

(c) in respect of a particular employee share ownership plan, that section 4(1)(d)(i) to (iii); or

(d) in respect of a particular employee venture capital plan, that section 15(1)(d)

does not apply.

(6) Each share offering document, share certificate and investment confirmation relative to the shares under a plan must state conspicuously on its face

(a) that

(i) share offerings, share acquisitions or share dispositions whether legal or beneficial are subject to the *Employee Investment Act*,

(ii) any disposition or transfer of the shares is restricted by the *Employee Investment Act*, and

(iii) any transfer before may adversely affect the value of the shares, and

(b) any other prescribed information.

Offences

36(1) A person commits an offence where the person

(a) makes a statement in any record, report, return, application, form or other document or information requiring to be filed or furnished under this Act or the regulations to the administrator or to a person conducting an examination, inquiry or investigation under section 34 that, at the time and in the light of the circumstances under which the statement is made, is false or misleading with respect to a material fact or that omits to state a material fact, the omission of which makes that statement false or misleading.

(b) wilfully withholds, destroys or conceals a record or thing referred to in section 32 or 34(1)(a);

(c) impedes the administrator or other authorized person from entering premises under section 34(1)(b);

(d) authorizes, permits or acquiesces in respect of a share purchase, transfer or redemption that is contrary to a provision of this Act or the regulations; or

(e) fails to comply with section 31.

(2) Where a corporation is convicted of an offence under subsection (1)(a) to (e),

(a) the court may impose a fine of up to \$100 000; and

(b) every director or officer of the corporation who authorized, permitted or acquiesced in the offence also commits the offence.

(3) Where an individual is convicted of an offence under subsection (1)(a) to (d), that individual is liable to a maximum fine of \$50 000 or to imprisonment for not more than one year, or to both the fine and imprisonment.

(4) No person commits an offence under this section in relation to a statement made if the person did not know that the statement was false or misleading and, in the exercise of reasonable diligence, could not have known that the statement was false or misleading.

Limitation period

37 No proceedings for an offence under this Act shall be commenced more than 2 years after the facts on which the proceedings are based first come to the knowledge of the administrator.

Regulations and orders

38(1) The Lieutenant Governor in Council may make regulations, including regulations

(a) governing any matter that may be prescribed under this Act;

(b) that he considers to be necessary or advisable for or ancillary to the purposes of this Act;

(c) defining any word or expression used but not defined in this Act;

(d) requiring any person to supply information or returns respecting any matter required in assessing compliance with this Act; and

(e) establishing periods of time to be taken into account in calculations or determinations under this Act or the regulations, and varying periods set by this Act.

(2) The administrator may, by order, extend the time limit for doing anything under this Act or the regulations, and may grant the extension notwithstanding that the time limit to be extended has expired.

(3) The regulations under subsection (1) may provide differently for corporations with different levels of approved equity capital.

(4) The Lieutenant Governor in Council may, where he or she considers it in the public interest to do so and with or without conditions, order, in respect of a particular employee venture capital plan, that any or all of sections 9(a) to (c), 11 and 13(1) and (2) do not apply.

Consequential
Amendments
Company Act

39 No company other than a company registered under Part 2 of this Act shall carry on business under a name that includes the initials "(EVCC)".

40(1) *The Alberta Corporate Income Tax Act is amended by this section.*

(2) *The following is added after section 26.6:*

Employee
investment tax
credit

26.7 In this section

(a) "employee investment tax credit" means a credit in respect of a tax credit certificate issued to a taxpayer under section 7(2) or 24(2) of the *Employee Investment Act*;

(b) "tax otherwise payable" means the amount that would, for section 120.1 of the federal Act, be the tax otherwise payable under this Act.

(2) Where, in respect of a taxation year, a taxpayer has been issued a tax credit certificate, there shall be deducted from the tax otherwise payable by that taxpayer under this Part in respect of that taxation year the lesser of

(a) the employee investment tax credit; or

(b) \$2 000.

(3) A taxpayer who is entitled to a deduction under this section shall file, with his annual return for any taxation year in respect of which a deduction is claimed under this section, a copy of the tax credit certificate.

(4) A taxpayer is not entitled to a deduction under this section unless he files a return under section 12 within 3 years after the end of the taxation year to which the deduction pertains.