

# CONSOLIDATION OF NUNAVUT BUSINESS CREDIT CORPORATION ACT

R.S.N.W.T. 1988,c.107(Supp.)  
In force October 1, 1991: SI-013-91

(Current to: April 5, 2007)

The following provisions have been deleted for the purposes of this consolidation:

- s.55 (Consequential Amendment)
- s.56 (Repeal)
- s.57 (Commencement)

## AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

- S.N.W.T. 1994,c.7  
In force January 1, 1995: SI-019-94
- S.N.W.T. 1996,c.19  
In force April 1, 1998: SI-005-98
- S.N.W.T. 1997,c.8
- S.N.W.T. 1998,c.24  
In force March 31, 1999

## AS AMENDED BY NUNAVUT STATUTES:

- S.Nu. 2003,c.16  
In force November 5, 2003

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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**NUNAVUT BUSINESS CREDIT CORPORATION ACT****INTERPRETATION**

## Definitions

1. In this Act,

"application" means an application made under subsection 27(1) or 28(1); (*demande*)

"Board" means the Board of Directors of the Corporation established by subsection 6(1); (*conseil*)

"bond" includes a bid bond, performance bond and labour and material payment bond; (*cautionnement*)

"bonding company" means a company or corporation that provides bonds; (*compagnie de cautionnement*)

"borrower" means a person to whom a loan or a guaranteed loan has been made or a bond or an indemnified bond has been provided; (*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 is registered under the *Partnership Act*, or
- (d) a corporation incorporated under Part II of the *Canada Corporations Act* and commonly known as a community futures organization; or
- (e) an individual; (*entreprise commerciale*)

"Corporation" means the Nunavut Business Credit Corporation established by section 2; (*Société*)

"director" means a director of the Board appointed under subsection 6(2); (*administrateur*)

"financial institution" means a bank, trust company, credit union or other institution whose business is the lending of money; (*établissement financier*)

"Financial Management Board" means the Financial Management Board established under the *Financial Administration Act*; (*Conseil de gestion financière*)

"fund" means the fund established under subsection 45(1); (*fonds*)

"guarantee" means a guarantee given to a financial institution under subsection 37(2); (*garantie*)

"guaranteed loan" means a loan made by a financial institution to a borrower, the repayment of which is guaranteed under subsection 37(2); (*prêt garanti*)

"indemnified bond" means a bond provided by a bonding company for which an indemnity is given under subsection 37(2); (*cautionnement faisant l'objet d'une promesse d'indemniser*)

"indemnity" means an indemnity given to a bonding company under subsection 37(2); (*promesse d'indemniser*)

"lending officer" means a lending officer appointed under subsection 14(1); (*agent prêteur*)

"manager" means the manager of the Corporation appointed under subsection 12(1); (*directeur*)

"prescribed" means prescribed by regulation; (*Version anglaise seulement*)

"public service" means the public service as defined in the *Public Service Act*; (*fonction publique*)

"regional board" means a regional business loans board established under subsection 17(1); (*conseil régional*)

"resident" means a person who has ordinarily resided in Nunavut for at least three years including any temporary absence from Nunavut which, in the opinion of the Board, Minister, manager or lending officer, should not deprive the person of his or her status as a resident; (*résident*)

"resident 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*, the majority of the shares of which are owned by a resident or another resident business enterprise or both,
- (b) a co-operative association registered or incorporated under the *Co-operative Associations Act*, the majority of the shares of which are owned by a resident or, where the co-operative was incorporated without share capital, the majority of whose members are residents,

- (c) a partnership for which a declaration is registered under the *Partnership Act*, the majority of whose partners are residents or other resident business enterprises or both, or
- (d) a resident. (*entreprise commerciale résidente*)  
S.N.W.T. 1996,c.19,Sch.,s.7; S.N.W.T. 1998,c.24,s.21;  
S.Nu. 2003,c.16,s.2,3(b),4.

## NORTHWEST TERRITORIES BUSINESS CREDIT CORPORATION

### Corporation established

**2.** This Act establishes a corporation called the Nunavut Business Credit Corporation. S.Nu. 2003,c.16,s.5.

### Agent of government

**3.** The Corporation is an agent of the Government of Nunavut.  
S.Nu. 2003,c.16,s.3(c).

### Natural person

**4.** Subject to this Act, the Corporation has the capacity, rights, powers and privileges of a natural person.

### Powers

- 5.** (1) Subject to this Act, the Corporation may
- (a) for the purpose of stimulating economic development and employment in Nunavut, make loans to business enterprises, guarantee loans made by financial institutions to business enterprises, provide bonds to resident business enterprises and indemnify bonds provided by bonding companies to resident business enterprises; and
  - (b) acquire and hold security for the due discharge of obligations under a loan made, a bond provided or a guarantee or an indemnity given by it and sell or otherwise dispose of or realize on such security.

### Power to hold and dispose of shares

- (2) The Corporation may, for the purposes of paragraph (1)(b),
- (a) acquire shares of a corporation that, on acquisition, would be held by, on behalf of or in trust for the Corporation;
  - (b) dispose of the shares of a corporation that are held by, on behalf of or in trust for the Corporation; and
  - (c) procure the dissolution of a corporation any shares of which are held by, on behalf of or in trust for the Corporation.  
S.Nu. 2003,c.16,s.3(b).



#### Board of Directors

**6.** (1) There shall be a Board of Directors of the Corporation composed of not fewer than seven and not more than 12 directors.

#### Appointment

(2) The Commissioner in Executive Council, on the recommendation of the Minister, shall appoint individuals as directors and shall, from among the directors, designate a chairperson and a vice-chairperson of the Board.

#### Term

(3) A director holds office, during pleasure, for a term of three years except that each of the first 12 members appointed after the coming into force of this section shall hold office for a term of one to three years as expressed in his or her appointment.

#### Business of the Corporation

**7.** (1) The Board shall direct the business of the Corporation and may for that purpose exercise the powers and perform the duties of the Corporation.

#### Ministerial directions and policy guidelines

(2) The Board, in exercising its powers and performing its duties, shall act in accordance with written directions and policy guidelines that the Minister issues or establishes.

#### By-laws

**8.** The Board may make by-laws governing its proceedings and providing generally for the conduct of business of the Corporation.

#### Quorum

**9.** (1) A majority of directors constitutes a quorum.

#### Meeting by telephone

(2) Where the directors are unable to constitute a quorum in one place and there are urgent matters for the Board to consider, the directors may participate in a meeting by a telephone conference call.

#### Duty of chairperson

**10.** (1) The chairperson, or vice-chairperson when the chairperson is absent, shall preside at meetings of the Board.

#### Vote of chairperson

(2) The chairperson, or vice-chairperson when the chairperson is absent, is entitled to vote only where the vote is required to break a tie.

### Expenses and honorarium

**11.** A director shall, in accordance with the regulations, receive reimbursement for expenses incurred in the performance of his or her duties while away from his or her place of residence and shall also receive,

- (a) where the director is not a member of the public service, an honorarium in accordance with the regulations; or
- (b) where the director is the chairperson, or the vice-chairperson acting as chairperson, and is not a member of the public service, a salary or honorarium in accordance with the regulations.

S.N.W.T. 1997,c.8,s.22(2).

### Manager

**12.** (1) The Minister, in consultation with the Board, shall appoint a manager of the Corporation.

### Remuneration

(2) The Minister shall fix the remuneration and other terms and conditions of employment of the manager and, in doing so, shall consider any recommendations of the Board regarding the terms and conditions of employment.

### Member of public service

(3) The manager is a member of the public service.

### Duties of manager

(4) The manager is the chief executive officer of the Corporation and shall supervise, manage and direct the business of the Corporation in accordance with the direction of the Board.

### Conflict of interest

**13.** The *Conflict of Interest Act* applies to the manager and the directors.

### Employees

**14.** (1) The Board may appoint lending officers and other employees that it considers necessary for the purposes of this Act.

### Members of public service

(2) The employees of the Corporation are members of the public service.

### Confidentiality

**15.** Any information received by an employee of the Corporation or a director about a business enterprise that applies for a loan, bond, guarantee or indemnity is confidential and shall 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.

### Liability

**16.** Subject to Part X of the *Financial Administration Act*, no proceedings lie against a director, an employee or any person acting for or on behalf of the Corporation, the Board, the manager or a director under this Act or the regulations for any act or omission that he or she, acting in good faith, reasonably believed was required or authorized by this Act or the regulations.

## REGIONAL BUSINESS LOANS BOARDS

### Establishment of regional business loans boards

**17.** (1) The Commissioner in Executive Council, on the recommendation of the Minister, may, by regulation as he or she considers necessary or appropriate for the purposes of this Act, establish or dissolve regional business loans boards.

### Assignment of regions

(2) The Commissioner in Executive Council, on the recommendation of the Minister, may, by regulation, assign a region of Nunavut composed of certain communities to each regional board that is established. S.Nu. 2003,c.16,s.3(b).

### Appointment to regional boards

**18.** (1) Subject to subsection (2), the Commissioner in Executive Council, on the recommendation of the Minister, shall appoint four members to each regional board that is established and shall, from among the members of a regional board, designate a chairperson and a vice-chairperson of the regional board.

### Chairperson

(2) The chairperson of a regional board shall reside in one of the communities in the region that is assigned to the regional board.

### Term

(3) The members of a regional board hold office, during pleasure, for a term of two years except that each of the first four members appointed after the coming into force of this section shall hold office for a term of one to two years as expressed in his or her appointment.

### Conflict of interest

**19.** The *Conflict of Interest Act* applies to a regional board and its members.

### Procedure

**20.** A regional board shall, subject to this Act and the regulations, determine its own procedures.

### Quorum

**21.** (1) The chairperson, or vice-chairperson when the chairperson is absent, and two other members of a regional board constitute a quorum.

#### Meeting by telephone

(2) Where the members of a regional board are unable to constitute a quorum in one place and there are urgent matters for the regional board to consider, the members may participate in a meeting by a telephone conference call.

#### Duty of chairperson

**22.** (1) The chairperson of a regional board, or the vice-chairperson when the chairperson is absent, shall preside at meetings of the regional board.

#### Vote of chairperson

(2) The chairperson of a regional board, or the vice-chairperson when the chairperson is absent, is entitled to vote only when the vote is required to break a tie.

#### Expenses and honorarium

**23.** A member of a regional board shall, in accordance with the regulations, receive reimbursement for expenses incurred in the performance of his or her duties while away from his or her place of residence and, where the member is not a public servant, an honorarium. S.N.W.T. 1997,c.8,s.22(3).

#### Administrative assistance

**24.** Subject to the *Public Service Act* and the regulations made under that Act, the Minister may assign persons in the public service to assist a regional board in the administration of its affairs.

#### Confidentiality

**25.** Any information received by a member of a regional board or by a person assigned to assist a regional board about a business enterprise that applies for a loan, bond, guarantee or indemnity is confidential and shall not be disclosed by the member or person

- (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.

#### Liability

**26.** Subject to Part X of the *Financial Administration Act*, no proceedings lie against a member of a regional board or any person acting for or on behalf of a regional board or a member of a regional board under this Act or the regulations for any act or omission that he or she, acting in good faith, reasonably believed was required or authorized by this Act or the regulations.

## LOANS, BONDS, GUARANTEES AND INDEMNITIES

### Application for loan

**27.** (1) An application for a loan may be made to the Board or, where an applicant carries on business in one or more communities in a region assigned to a regional board and the principal amount of the loan requested does not exceed the maximum determined by the Board, to the regional board for that region.

### Eligibility for loan

- (2) A business enterprise is eligible to apply for a loan if
- (a) it is or would likely be unable to obtain a loan from a financial institution on reasonable terms and conditions; or
  - (b) there is not a financial institution or branch of a financial institution in a community in which the business enterprise carries on business.

### Determination of eligibility

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

### Application for guarantee

**28.** (1) An application for a bond, guarantee or indemnity may be made to the Board.

### Eligibility for bond

(2) A resident business enterprise is eligible to apply for a bond if it is or would likely be unable to obtain a bond from a bonding company.

### Determination of eligibility for bond

(3) For the purposes of subsection (2), the Board, manager or lending officer, when considering an application, shall determine whether an applicant would likely be unable to obtain a bond from a bonding company.

### Eligibility for guarantee

(4) A financial institution is eligible to apply for a guarantee of a loan the financial institution proposes to make to a business enterprise.

### Eligibility for indemnity

(5) A bonding company is eligible to apply for an indemnity in respect of a bond the bonding company proposes to provide to a resident business enterprise.

### Applications to Board

- 29.** (1) The Board shall consider every application
- (a) where the application in the approved form has been submitted to the Board with the prescribed fee and the principal amount of the loan, bond, guaranteed loan or indemnified bond does not exceed the maximum set out in subsection 37(3); or
  - (b) the chairperson of a regional board has referred the application to it under subsection (5).

### Consideration by manager or lending officer

(2) The manager or a lending officer may consider an application where the application in the approved form has been submitted to the Board with the prescribed fee and the principal amount of the loan, bond, guaranteed loan or indemnified bond does not exceed the maximum determined by the Board.

### Limit of maximum

(3) The maximum, for the principal amount of loan, bond, guaranteed loan or indemnified bond, determined by the Board under subsection (2) must not exceed \$500,000.

### Applications to regional board

(4) Subject to subsection (5), a regional board shall consider every application for a loan where the application in the approved form has been submitted to the regional board with the prescribed fee and

- (a) the principal amount of the loan does not exceed the maximum determined by the Board; and
- (b) the applicant carries on business in one or more communities in the region assigned to the regional board.

### Referral to Corporation

(5) The chairperson of a regional board shall refer an application to the Board for its consideration where the regional board requires assistance or is unable to act.

### Recommendation by Board

- 30.** (1) After considering the merits of an application, the Board shall, where the principal amount of a loan, bond, guaranteed loan or indemnified bond is greater than \$500,000, recommend to the Minister that
- (a) a loan be made, a bond be provided or a guarantee or indemnity be given and, subject to section 31, the terms and conditions on which the loan may be made, the bond may be provided or the guarantee or indemnity may be given and
    - (i) the security for the loan, where the making of a loan is recommended, or

- (ii) the security for the loan to be taken by the financial institution, where the giving of a guarantee is recommended; or
- (b) the application be rejected.

#### Approval or rejection by Minister

(2) On receipt of a recommendation from the Board made under subsection (1), the Minister shall, after considering the recommendation, the merits of the application and any further information,

- (a) approve the loan, bond, guarantee or indemnity and, subject to section 31, specify the terms and conditions on which the loan may be made, the bond may be provided or the guarantee or indemnity may be given and
  - (i) the security for the loan, where an application for a loan is approved, or
  - (ii) the security for the loan to be taken by the financial institution, where an application for a guarantee is approved; or
- (b) reject the application.

#### Approval or rejection by Board, manager or lending officer

(3) After considering the merits of an application, the Board, manager or lending officer shall, where the principal amount of a loan, bond, guaranteed loan or indemnified bond is less than or equal to \$500,000,

- (a) approve the loan, bond, guarantee or indemnity and specify, subject to section 31, the terms and conditions on which the loan may be made, the bond may be provided or the guarantee or indemnity may be given and
  - (i) the security for the loan, where an application for a loan is approved, or
  - (ii) the security for the loan to be taken by the financial institution, where an application for a guarantee is approved; or
- (b) reject the application.

#### Recommendation of or rejection by regional board

(4) After considering the merits of an application, a regional board shall recommend to the Board that

- (a) a loan be made and, subject to section 31, the terms and conditions on which the loan may be made and the security for the loan; or
- (b) the application be rejected.

#### Approval or rejection by Board

(5) On receipt of a recommendation from a regional board made under subsection (4), the Board shall, after considering the recommendation, the merits of the application and any further information,

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

#### Terms and conditions

**31.** (1) Every loan made, bond provided or guarantee or indemnity given must be made, provided or given subject to the prescribed terms and conditions.

#### Term of loan agreement

(2) A loan may include one or both of the following terms:

- (a) that payment of principal may be deferred for a period up to three years;
- (b) that, subject to the approval of the Financial Management Board, the interest rate may be fixed at a rate lower than the prescribed rate.

#### Condition of guarantee

(3) A guarantee must include a condition that the financial institution take from the borrower a promissory note and such security as may be specified by the Minister, Board, manager or lending officer.

#### Conditions applicant must meet

**32.** (1) An application shall be rejected unless the Board, manager, lending officer or Minister considering it is satisfied

- (a) the statements in the application are truthful and accurate;
- (b) the applicant for a bond can perform the work or supply the materials in respect of which the bond would be provided;
- (c) the financial institution applying for a guarantee is making the loan to be guaranteed with reasonable care;
- (d) the bonding company applying for an indemnity is providing the bond with reasonable care;
- (e) the terms and conditions of the loan to be guaranteed or the bond to be indemnified are clear and reasonable; and
- (f) the principal and interest on the loan to be made or guaranteed will be repaid.

#### Grounds for rejection

(2) The Board, manager, lending officer or Minister considering an application shall reject it where

- (a) the applicant is not eligible;
- (b) the making of the loan, provision of the bond or giving of the guarantee or indemnity is not likely to stimulate economic development and employment in Nunavut;



- (c) the purpose for which the loan is to be made or the bond is to be provided is not, in the opinion of the Board, manager, lending officer or Minister, 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, manager, lending officer or Minister, as the case may be, is satisfied that special circumstances exist that justify waiving this requirement.

"Equity" defined

(3) For the purposes of paragraph (2)(d), "equity" means the excess of assets over liabilities. S.Nu. 2003,c.16,s.3(b).

Final decision

**33.** A decision of the Minister under subsection 30(2) or of the Board under subsection 30(5) is final.

Further information

**34.** Where 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).

Application to Board for review

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

Decision by Board

(2) The Board shall review a rejection when an application is made under subsection (1) and shall

- (a) confirm the decision of the lending officer or the manager, as the case may be; or
- (b) subject to the limitations set out in sections 31 and 32, approve the loan, bond, guarantee or indemnity and specify the terms and conditions on which the loan may be made, the bond may be provided or the guarantee or indemnity may be given and
  - (i) the security for the loan, where an application for a loan is approved, or
  - (ii) the security for the loan to be taken by the financial institution, where an application for a guarantee is approved.

Final decision

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

Application to Minister for review

**36.** (1) Where an application is rejected by the Board under paragraph 30(3)(b), the applicant may apply to the Minister for a review.

### Decision by Minister

(2) The Minister shall review a rejection when an application is made under subsection (1) and shall

- (a) confirm the decision of the Board; or
- (b) subject to the limitations set out in sections 31 and 32, approve the loan, bond, guarantee or indemnity and specify the terms and conditions on which the loan may be made, the bond may be provided or the guarantee or indemnity may be given and
  - (i) the security for the loan, where an application for a loan is approved, or
  - (ii) the security for the loan to be taken by the financial institution, where an application for a guarantee is approved.

### Final decision

(3) A decision of the Minister under subsection (2) is final.

### Making loan

**37.** (1) Subject to subsection (3) of this section and subsection 48(2), the Corporation shall make a loan in accordance with the approval of the Minister, the Board, the manager or a lending officer where the approval is made in accordance with this Act and the regulations and shall, at the time the loan is made,

- (a) take a promissory note and the security from the borrower that is specified by the Minister, Board, manager or lending officer, as the case may be; and
- (b) enter into a written agreement with the borrower setting out the terms and conditions of the loan.

### Giving guarantee

(2) Notwithstanding sections 86 and 87 of the *Financial Administration Act* but subject to subsection (3) of this section and subsection 48(2), the Corporation shall,

- (a) where a guarantee or an indemnity is approved by the Minister, the Board, the manager or a lending officer in accordance with this Act and the regulations, give a guarantee or an indemnity in accordance with the approval;
- (b) where a guarantee is given, enter into a written agreement with the financial institution making the loan setting out the terms and conditions of the guarantee; and
- (c) where an indemnity is given, enter into a written agreement with the bonding company providing the bond setting out the terms and conditions of the indemnity.

**Limit**

(3) No loan shall be made, no bond shall be provided and no guarantee or indemnity shall be given by the Corporation that would cause the aggregate of the principal amounts in respect of all loans, bonds, guaranteed loans or indemnified bonds made to or in respect of one business enterprise and any related business enterprise to exceed \$1,000,000.

**Discretion of Board**

(4) For the purposes of subsection (3),

- (a) where the Board, the manager or a lending officer has approved a loan, bond, guarantee or indemnity, the Board has sole discretion to determine whether business enterprises are related; and
- (b) where the Minister has approved a loan, bond, guarantee or indemnity, the Minister has sole discretion to determine whether business enterprises are related.

**Definition of "business enterprise"**

(5) In subsections (3) and (4), "business enterprise" includes a resident business enterprise.

**Obligations of borrower**

**38.** On receiving a loan, a bond, a guaranteed loan or an indemnified bond, a borrower shall

- (a) maintain books and accounting records in a form acceptable to the Board until the borrower has discharged all obligations under the loan, 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 days of the borrower's financial year end.

**Acceleration of principal**

**39.** The balance outstanding on a loan made by the Corporation becomes due and payable at the option of the Corporation where

- (a) the borrower does not comply with section 38;
- (b) the borrower is in default in respect of any payment on the loan; or
- (c) the borrower ceases to be a business enterprise.

**Terms shall not be altered**

**40.** (1) A financial institution shall not alter the terms or conditions of or the security for a guaranteed loan, and a bonding company shall not alter the terms or conditions of an indemnified bond, without the prior written consent of the Corporation.

**Liability on guarantee or indemnity**

(2) Subject to subsection (3), the Corporation is not liable

- (a) on a guarantee where the financial institution alters the terms or conditions of or the security for the guaranteed loan without the prior written consent of the Corporation; or
- (b) on an indemnity where the bonding company alters the terms or conditions of the indemnified bond without the prior written consent of the Corporation.

**Waiver**

(3) The Corporation or a person delegated by the Corporation may, by notice in writing to the financial institution or bonding company, waive the exemption from liability under subsection (2).

**Payment on guarantee**

(4) The Corporation is not liable on a guarantee or an indemnity and shall not make a payment to a financial institution under a guarantee or to a bonding company under an indemnity unless

- (a) the financial institution or bonding company submits a claim, in accordance with the guarantee or indemnity, for the loss suffered by it on the guaranteed loan or indemnified bond;
- (b) the claim is made in compliance with this Act and regulations; and
- (c) the financial institution or bonding company assigns all its rights against the borrower to the Corporation in respect of the guaranteed loan or indemnified bond.

**Change of terms or conditions of a loan**

**41.** (1) The Corporation may change the terms or conditions of a loan made or of a bond provided by the Corporation where

- (a) the borrower agrees;
- (b) the change is approved by
  - (i) the Minister, where the Minister approved the loan or bond,
  - (ii) the Board, where the Board approved the loan or bond, or
  - (iii) the manager or a lending officer, where the manager or the lending officer approved the loan or bond; and
- (c) the change would not be contrary to this Act or the regulations.

**Change of terms or conditions of a guarantee**

(2) The Corporation may change the terms and conditions of a guarantee or an indemnity where

- (a) the financial institution or bonding company agrees;
- (b) the change is approved by
  - (i) the Minister, where the Minister approved the guarantee or indemnity,
  - (ii) the Board, where the Board approved the guarantee or indemnity, or

- (iii) the manager or a lending officer, where the manager or the lending officer approved the guarantee or indemnity; and
- (c) the change would not be contrary to this Act or the regulations.

#### Meeting of Board

(3) For the purposes of subsections (1) and (2), where the Board approved the loan, bond, guarantee or indemnity, the Board shall meet and consider the proposed change to the terms and conditions of the loan, bond, guarantee or indemnity.

#### Transfer of loan or bond

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

#### Inconsistency with Act

**43.** Any agreement or document executed under this Act is, to the extent that it is inconsistent with this Act or the regulations, of no effect.

#### Corporate seal

**44.** An agreement or document executed on behalf of the Corporation by a director, an officer or an agent is not invalid merely because a corporate seal is not affixed to the agreement or document.

## FINANCIAL ADMINISTRATION

#### Business Loans and Guarantees Fund

- 45.** (1) The Corporation shall establish a fund to which the Corporation shall 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, bonds provided, or guarantees or indemnities given under this Act or in respect of loans made or guarantees given under the *Business Loans and Guarantees Act*; and
  - (c) all moneys received or credited under subsection (2) and sections 46 and 47.

#### Transitional

(2) The assets, liabilities and contingent liabilities of the Business Loans and Guarantees Fund established by the *Business Loans and Guarantees Act* shall be transferred to the Corporation for such consideration as may be determined by the Financial Management Board on a date to be agreed on by the Corporation and the Financial Management Board.

#### Definition of "assets"

- (3) In subsection (2), "assets" means
- (a) the principal amount of all loans made under the *Business Loans and Guarantees Act* that, on the day this section comes into force,

- are outstanding and have not been written off under the *Financial Administration Act* and any interest that may be payable in respect of such loans; and
- (b) the interest in any property held by the Commissioner as security under the *Business Loans and Guarantees Act*, on the day this section comes into force, in respect of any loan made under the *Business Loans and Guarantees Act* that is outstanding and has not been written off under the *Financial Administration Act*.

#### Contribution by Government

**46.** The Government of Nunavut may make a contribution to the Corporation out of money appropriated for that purpose. S.Nu. 2003,c.16,s.3(c).

#### Loans to Corporation

**47.** (1) Subject to section 80 of the *Financial Administration Act*, the Minister of Finance, on the recommendation of the Financial Management Board, may lend, out of the Consolidated Revenue Fund, to the Corporation an amount not exceeding in the aggregate \$50,000,000 less

- (a) the amount in the fund at the time the loan is made; and
- (b) the principal amounts of all loans outstanding and all amounts paid under a guarantee, a bond or an indemnity that have not been recovered at the time the loan is made,
- (i) where such amounts have not been written off under the *Financial Administration Act*, or
- (ii) where such amounts have been written off under the *Financial Administration Act* but have not been fully credited to the fund under subsection 49(2).

#### Terms and conditions

(2) Loans made under subsection (1) shall be made on such terms and conditions as are fixed by the Minister of Finance, on the recommendation of the Financial Management Board.

#### Advance from Fund

**48.** (1) Subject to subsection (2), the Board may advance out of the fund such amounts as are required

- (a) for the purposes of making loans or honouring bonds, guarantees or indemnities;
- (b) for the protection of security taken from a borrower or of the Corporation's priority with respect to such security;
- (c) for the repayment of principal and the payment of interest and other charges in respect of a loan made under subsection 47(1); and
- (d) for such other purposes as the Board considers necessary for the purposes of this Act.

**Limit**

(2) No loan may be made, no bond may be provided and no guarantee or indemnity may be given under this Act that would cause the aggregate of the principal amounts of all loans, bonds, guarantees and indemnities outstanding to exceed the amount in the fund at the time the loan is made, the bond is provided or the guarantee or indemnity is given.

**Losses chargeable to fund**

**49.** (1) Losses to the fund as a result of debts or obligations owed to the Corporation that are written off under the *Financial Administration Act* are chargeable to the fund.

**Repayment credited towards losses**

(2) All repayments of principal, all monies receivable in interest and all monies realized on any security in respect of loans made, bonds provided or guarantees or indemnities given under this Act or in respect of loans made or guarantees given under the *Business Loans and Guarantees Act* must be credited to the fund firstly in respect of losses referred to in subsection (1).

**Fiscal year**

**50.** The fiscal year of the Corporation begins on April 1 in one year and ends on March 31 in the following year.

**REGULATIONS****Regulations**

- 51.** The Commissioner in Executive Council may make regulations
- (a) respecting the amounts a director, chairperson and vice-chairperson may receive under section 11 as an honorarium or a salary and for reimbursement for expenses;
  - (b) establishing or dissolving regional boards and assigning a region of Nunavut to each regional board;
  - (c) setting out the communities that are in each region of Nunavut assigned to a regional board;
  - (d) respecting the procedure and policies to be followed by regional boards;
  - (e) respecting the amounts a member of a regional board may receive under section 23 as an honorarium and for reimbursement for expenses;
  - (f) prescribing the information to be included in an application and the manner of applying for a loan, bond, guarantee or indemnity;
  - (g) respecting the information and any supporting documents to be submitted by an applicant;
  - (h) prescribing fees, or a manner of calculating fees, for application for a loan, bond, guarantee or indemnity;
  - (i) respecting applications to the Board and the Minister for review;

- (j) respecting the terms and conditions of loans, bonds, guarantees and indemnities;
- (k) respecting the security that must be taken by the Corporation where a loan is made or by a financial institution where a guarantee given;
- (l) respecting interest rates applicable to classes of loans or to particular loans;
- (m) respecting the form and content of agreements made under this Act;
- (n) respecting information to be provided by a borrower who receives a loan or bond, by a financial institution that receives a guarantee or by a bonding company that receives an indemnity;
- (o) respecting procedures for the collection of loans that are in default and of any amount paid under a bond, a guarantee or an indemnity and any costs that may be recoverable;
- (p) respecting the manner and form in which a claim for loss by a financial institution or bonding company must be made and the period within which it must be made;
- (q) respecting the retention of annual operating surpluses and the liability for annual operating deficits; and
- (r) for carrying out the purposes of this Act.  
S.N.W.T. 1997,c.8,s.22(4); S.Nu. 2003,c.16,s.3(b).

## TRANSITIONAL

### Territorial Business Loans Board

**52.** The chairperson and other members of the Territorial Business Loans Board, appointed under the *Business Loans and Guarantees Act*, cease to hold office on the coming into force of this Act.

### Regional business loans boards

**53.** The chairperson and other members of the regional business loans boards, appointed under the *Business Loans and Guarantees Act*, cease to hold office on the coming into force of this Act.

### Recommendation to Commissioner deemed approval

**54.** (1) Where an application for a loan or guarantee has been made under the *Business Loans and Guarantees Act* and a recommendation has been made to the Commissioner, under subsection 16(2) of that Act, that the loan be made or the guarantee be given, if the loan has not been made or the guarantee has not been given before the day this section comes into force, the recommendation shall be deemed to be an approval by the Minister under paragraph 30(2)(a) of this Act.



Recommendation to Minister deemed recommendation under this Act

(2) Where an application for a loan or guarantee has been made under the *Business Loans and Guarantees Act* and the Territorial Business Loans Board or a regional business loans board has recommended to the Minister that the loan be made or the guarantee given, if the loan has not been made or the guarantee has not been given before the day this section comes into force, the recommendation shall be deemed to be a recommendation to the Minister under paragraph 30(1)(a) of this Act.

Appeal deemed application for review

(3) An appeal commenced under subsection 14(1) of the *Business Loans and Guarantees Act* that has not been decided under subsection 14(2) of that Act before the day on which this section comes into force shall be deemed to be an application for a review under subsection 36(1) of this Act.