

Innovation Corporation Act

CHAPTER 5 OF THE ACTS OF 1994-95

as amended by

2004, c. 3, s. 25; 2014, c. 33, ss. 15-22; 2015, c. 6, ss. 24-27



© 2016 Her Majesty the Queen in right of the Province of Nova Scotia
Published by Authority of the Speaker of the House of Assembly
Halifax

This page is intentionally blank.

CHAPTER 5 OF THE ACTS OF 1994-95
amended 2004, c. 3, s. 25; 2014, c. 33, ss. 15-22; 2015, c. 6, ss. 24-27

**An Act to Establish a Corporation
to Promote, Stimulate and Encourage
the Successful Development and
Commercialization of Technology
Products and Services**

Table of Contents

(The table of contents is not part of the statute)

	Section
Short title.....	1
Interpretation.....	2
Supervision of Act.....	3
Nova Scotia Innovation Corporation.....	4
Objects of Corporation.....	5
Powers of Corporation.....	6
Transfers and assignments of securities and agreements.....	6A
Board of Directors.....	7
Composition of Board and reimbursement for expenses.....	8
Chair of Board.....	9
Capital stock of Corporation.....	10
Increase in capital stock.....	11
Election, remuneration and expenses of members of Board.....	12
Vacancy does not impair right to act.....	13
Civil Service Act applies.....	13A
Exemption from taxation.....	14
Charge not a charge against Crown.....	15
Head office of Corporation.....	16
Administration expenses are those of Corporation.....	17
Corporation to administer First Fund.....	18
Transfer of funds to Corporation and approval and audit of books.....	19
Fiscal year.....	20
Annual financial statement and report.....	21
Five-year strategic plan.....	21A
Annual outcomes agreement.....	21B
Review of activities and operation.....	21C
Application of Bills of Sale Act.....	22
Consent required to wind up Corporation.....	23
Nova Scotia Innovation Corporation Limited.....	24
Nova Scotia Research Foundation Corporation.....	25
Regulations.....	26

Short title

1 This Act may be cited as the *Innovation Corporation Act*. 1994-95, c. 5,
s. 1.

MAY 11, 2015

Interpretation

2 In this Act,

- (a) “Board” means the Board of Directors of the Corporation;
- (aa) “business development incentive” means assistance by way of grant, loan, loan guarantee, the purchase or guarantee of bonds, debentures, notes or other debt obligations or the purchase or other acquisition of any common or preferred shares or other equity securities;
- (b) “Corporation” means Nova Scotia Innovation Corporation;
- (c) *repealed 2014, c. 33, s. 15.*
- (d) “Fund” means the Fund that, immediately prior to the coming into force of this Act, was known as the Nova Scotia First Fund;
- (e) “Minister” means the Minister of Business;
- (f) “Principal Share” means the Principal Share issued pursuant to Section 10. 1994-95, c. 5, s. 2; 2014, c. 33, s. 15; 2015, c. 6, s. 24.

Supervision of Act

3 The Minister has the general supervision and management of this Act. 1994-95, c. 5, s. 3.

Nova Scotia Innovation Corporation

4 There is hereby established a body corporate to be known as Nova Scotia Innovation Corporation. 1994-95, c. 5, s. 4.

Objects of Corporation

5 The objects of the Corporation are to

- (a) mobilize the necessary resources, nationally and internationally, to allow for technological development and commercialization in priority technology areas defined by the Corporation;
- (b) develop, in partnership with the private sector, value-added technology services and products available for the local and international marketplace;
- (c) become a strategic equity partner in joint-venture, private-sector technology initiatives;
- (d) provide incubator facilities to new technology enterprises and business support services to growing technology organizations;
- (e) build, in partnership with industry, technology-based companies with an export orientation;
- (f) provide a central technology-transfer brokerage and licensing and intellectual-property protection function for new technology;

(g) administer industry-oriented programs and services to assist in industry innovation; and

(h) provide technology policy, advice and guidance to government, as well as to be an effective agent for change respecting technology issues. 1994-95, c. 5, s. 5.

Powers of Corporation

6 (1) Subject to subsection (3), the Corporation may exercise such powers and carry on such activities as are necessary or conducive to achieving its objects and, without restricting the generality of the foregoing, may

(a) receive, acquire, take and hold real and personal property or any interest therein;

(b) sell, convey, mortgage or otherwise dispose of or deal with real or personal property or any interest therein;

(c) take over and administer the Fund;

(d) subject to the regulations, provide such business development incentives that, in the opinion of the Corporation, would further its objects;

(e) make such by-laws as the Corporation deems necessary to further its objects, in particular, for the internal control, management and administration of the Corporation, including the manner in which meetings of the Board and of the shareholders of the Corporation are called and the procedure at such meetings;

(f) employ such persons as may, from time to time, be required for the objects of the Corporation;

(g) establish advisory boards;

(h) carry on business under the name InNOVA Corp;

(i) acquire shares, including the controlling interest, in other corporations;

(j) borrow or raise money, from time to time;

(k) adopt articles of association that, on and from their adoption, are binding on the Corporation and its members and shareholders to the same extent as if they respectively had been signed and sealed by each member and shareholder and contained covenants on the part of each member and shareholder, and that member's and shareholder's heirs, executors, administrators and successors to observe all the provisions of the articles, with power to amend the articles from time to time.

(2) Approval of the holder of the Principal Share pursuant to subsection (1) may be given with respect to a specific activity or transaction or with

respect to one or more classes of activities or transactions and may be given subject to such terms and conditions as the holder of the Principal Share determines.

(3) Subject to subsection (4), the Corporation may not, without the prior written consent of the holder of the Principal Share,

(a) sell, convey, dispose of or transfer any right, title or interest in real or personal property that has been conveyed to the Corporation by any person who is, at the time of the conveyance, or was, prior to the time of the conveyance or becomes, at any time after the time of conveyance, the holder of the Principal Share;

(b) distribute any of its property *in specie* among its shareholders;

(c) amalgamate or merge with one or more other companies;

(d) continue itself in a jurisdiction other than the Province or change its head office or registered office;

(e) enter into any compromise or arrangement with its creditors or any class of creditors or its shareholders or any class of its shareholders;

(f) sell all or substantially all of its business or assets;

(g) create, allot or issue shares in its capital stock;

(h) make any material change in the nature of the business to be carried on by the Corporation as set out in any memorandum, understanding or agreement entered into between Her Majesty as represented by the Minister and the Minister of Finance and Treasury Board and the Corporation respecting the establishment of the Corporation and its general mandate;

(i) borrow money, finance or refinance the Corporation, give security or guarantee the payment or performance of obligations of any other person;

(j) appoint, remunerate or remove its chief executive officer, its chief financial officer or its chief operating officer;

(k) declare or pay dividends on the common shares of the Corporation;

(l) consolidate, convert, subdivide, exchange, cancel or otherwise alter or reorganize the share capital of the Corporation;

(m) wind up or dissolve or surrender its certificate of incorporation;

(n) carry out any voluntary act of bankruptcy or make a general assignment for the benefit of its creditors or other acknowledgment of insolvency or make any application pursuant to the

Bankruptcy and Insolvency Act (Canada) or the *Companies Creditors Arrangements Act* or any similar legislation.

(4) The holder of the Principal Share may waive the requirement contained in subsection (3) for its prior written consent.

(5) A waiver pursuant to subsection (3) may be given with respect to a specific activity or transaction or with respect to one or more classes of activities or transactions and may be given subject to such terms and conditions as the holder of the Principal Share determines.

(6) Any consent pursuant to this Section is not effective until it is evidenced by an instrument in writing that is addressed to the Corporation, to the attention of the secretary or such other officer as the holder of the Principal Share determines, and that is signed by the Minister or such other person as the Minister designates in writing from time to time.

(7) For greater certainty,

(a) where the exercise of a power is prohibited by subsection (2) without the written consent of the holder of the Principal Share, no action may be taken by the Corporation or by any person with respect to the exercise of that power and, without restricting the generality of the foregoing, any resolution of the Directors or shareholders with respect to the exercise of that power is ineffective;

(b) any consent or waiver pursuant to this Section may be withheld in the absolute and unfettered discretion of the holder of the Principal Share. 1994-95, c. 5, s. 6; 2014, c. 33, s. 16.

Transfers and assignments of securities and agreements

6A (1) Where required to do so by the Minister, the Corporation shall accept, on such terms and conditions as the Minister may prescribe, the transfer of any security that was owned by Nova Scotia Business Incorporated immediately before the transfer.

(2) Where required to do so by the Minister, the Corporation shall accept, on such terms and conditions as the Minister may prescribe, the assignment of the rights and obligations under any agreement that Nova Scotia Business Incorporated has entered into with a third party for the purpose of investing venture capital in the third party.

(3) Where the rights and obligations under an agreement are assigned pursuant to subsection (2),

(a) the assignment may be carried out notwithstanding any restriction on assignment provided for under the agreement being assigned;

(b) the assignment is not subject to any notice requirement under the agreement being assigned or otherwise existing at law;

(c) the assignment need not be in writing, notwithstanding any requirement prescribed by the agreement being assigned or otherwise existing at law;

(d) no person has or may maintain any cause of action or claim against Her Majesty in right of the Province, the Minister, Nova Scotia Business Incorporated or the Corporation arising from or in relation to the assignment; and

(e) the Corporation may enforce the agreement in the same manner as if it were Nova Scotia Business Incorporated. 2014, c. 33, s. 17.

Board of Directors

7 (1) There shall be a Board of Directors of the Corporation.

(2) The management and control of the affairs of the Corporation is vested in the Board and the Board may, subject to this Act, exercise the powers of the Corporation. 1994-95, c. 5, s. 7.

Composition of Board and reimbursement for expenses

8 (1) Subject to Section 12, the Board consists of

(a) the Deputy Minister of Finance;

(b) the Deputy Minister of the Nova Scotia Economic Renewal Agency;

(c) four persons appointed by the Governor in Council from nominations by the universities of the Province to hold office for such term as the Governor in Council determines;

(d) two persons, representing the Government of Canada, appointed by the Governor in Council to hold office for such term as the Governor in Council determines;

(e) eight persons, representing technology and information-based business, appointed by the Governor in Council to hold office for such term as the Governor in Council determines; and

(f) one person representing advanced technology and industry associations, nominated by the Nova Scotia Advanced Technology Collegium, appointed by the Governor in Council to hold office for such term as the Governor in Council determines.

(2) Each member of the Board appointed pursuant to subsection (1) shall be reimbursed for all reasonable expenses incurred by the member in carrying out that member's duties. 1994-95, c. 5, s. 8.

Chair of Board

9 Subject to Section 12, the Deputy Minister of the Nova Scotia Economic Renewal Agency is the Chair of the Board. 1994-95, c. 5, s. 9.

Capital stock of Corporation

10 (1) The Governor in Council may, by order, declare that the Corporation has a capital stock in the amount set out in the order divided into such number of shares and of such value as set out in the order.

(2) Where an order is made pursuant to subsection (1),

(a) the company has capital stock in the amount set out in the order divided into the number of shares set out in the order, each share having the value set out in the declaration; and

(b) the capital stock consists of

(i) Class A common voting shares in such number as determined in the order,

(ii) Class B non-voting shares in such number as determined in the order, and

(iii) one share, to be known as the “Principal Share”.

(3) No more than seventy-five per cent of the Class A common voting shares shall be beneficially owned by any person or persons other than Her Majesty in right of the Province.

(4) No Class A common voting share shall be beneficially owned by any person or persons not ordinarily a resident or residents of the Province.

(5) The Principal Share shall be beneficially owned by Her Majesty in right of the Province. 1994-95, c. 5, s. 10.

Increase in capital stock

11 The capital stock of the Corporation may be increased, from time to time, by the Governor in Council. 1994-95, c. 5, s. 11.

Election, remuneration and expenses of members of Board

12 (1) When at least sixty per cent of the capital stock has been issued, the Board shall convene a meeting of the persons to whom the stock has been issued for the purpose of electing eight persons to the Board.

(2) When eight persons have been elected to the Board pursuant to subsection (1),

(a) the term of office of each existing member of the Board expires;

- (b) the Board consists of
 - (i) subject to subsection (3), eight persons elected by the shareholders, and
 - (ii) four persons appointed by the Governor in Council; and
- (c) the Chair of the Board is that member of the Board who is elected as Chair of the Board by the members of the Board.

(3) No person may be elected to or may serve as a member of the Board unless that person is first approved for election to the Board by the holder of the Principal Share.

(4) Any approval pursuant to this Section is not effective until it is evidenced by an instrument in writing that is addressed to the Corporation, to the attention of the secretary or such other officer as the holder of the Principal Share determines, and that is signed by the Minister or such other person as the Minister designates in writing from time to time.

(5) Each member of the Board elected and appointed pursuant to this Section shall receive such remuneration and other reasonable expenses incurred in carrying out their duties, the amount of such remuneration and expenses to be determined by the Governor in Council.

(6) Each member of the Board elected by the shareholders serves for such term of office as determined by the shareholders and each member of the Board appointed by the Governor in Council serves for such term of office as the Governor in Council determines.

(7) Where a member of the Board appointed by the Governor in Council ceases to be a member of the Board or is unable to act prior to the expiration of that person's term of office, the Governor in Council may fill the vacancy and, where the vacancy is caused by a member of the Board elected by the shareholders ceasing to be a member of the Board or becoming unable to act, the members of the Board may fill the vacancy. 1994-95, c. 5, s. 12; 2014, c. 33, s. 18; 2015, c. 6, s. 25.

Vacancy does not impair right to act

13 A vacancy on the Board does not impair the right of the remaining members to act. 1994-95, c. 5, s. 13.

Civil Service Act applies

13A Section 44A of the *Civil Service Act* applies *mutatis mutandis* to the members of the Board. 2014, c. 33, s. 19.

Exemption from taxation

14 (1) Subject to subsection (2), the Corporation, its property and assets, are not subject to taxation.

(2) Where the Governor in Council from time to time so orders, subsection (1) does not apply to any source of income, property or asset that is specified in the order. 1994-95, c. 5, s. 14.

Charge not a charge against Crown

15 Notwithstanding any provision of this Act or any special or general Act, no mortgage, pledge or charge against the real and personal property of the Corporation is or shall be deemed to be a mortgage, pledge or charge against any real and personal property of Her Majesty in right of the Province. 1994-95, c. 5, s. 15.

Head office of Corporation

16 The head office of the Corporation shall be in Dartmouth but, with the approval of the holder of the Principal Share, the Corporation may relocate its head office to a location outside Dartmouth but not outside the Province. 1994-95, c. 5, s. 16.

Administration expenses are those of Corporation

17 The administration expenses incurred pursuant to this Act are expenses of the Corporation but are not a charge upon the Fund. 1994-95, c. 5, s. 17.

Corporation to administer First Fund

18 The Corporation may take over the administration of the Nova Scotia First Fund and may fulfil any commitments made with respect to the Fund that were made prior to the coming into force of this Act but not fulfilled on the coming into force of this Act and may otherwise use and administer the Fund for the purpose of achieving its objects. 1994-95, c. 5, s. 18.

Transfer of funds to Corporation and approval and audit of books

19 (1) The Governor in Council, upon the recommendation of the Minister may, from time to time, advance to the Fund such amounts as are considered necessary for the purpose of this Act and may charge the same to capital account, special reserve account or revenue of the Province for any year or years.

(2) The system of accounting and the books and records of the Corporation are subject to the approval of the Minister of Finance and Treasury Board and subject to audit by the Auditor General or any person designated by the Auditor General. 1994-95, c. 5, s. 19; 2004, c. 3, s. 25; 2014, c. 33, s. 20.

Fiscal year

20 The fiscal year of the Corporation ends on March 31st of each year. 1994-95, c. 5, s. 20.

Annual financial statement and report

21 The Corporation shall, not later than June 30th in each year, prepare and submit to the Minister a financial statement setting forth, as a minimum, the assets and liabilities of the Corporation and the revenues and expenses of the Corpo-

ration for the previous fiscal year, together with a report concerning the work of the Corporation during the previous fiscal year. 2015, c. 6, s. 26.

Five-year strategic plan

21A (1) As required by the Minister, the Corporation shall submit to the Minister for approval a five-year strategic plan for the operation of the Corporation.

(2) Within five years after the Corporation submits a five-year strategic plan to the Minister, it shall

(a) submit a detailed evaluation of its activities compared against the five-year strategic plan, including any recommendations for modifications to the mandate of the Corporation; and

(b) cause a review of its activities and operation to assess how they relate to the Corporation's objects and the five-year strategic plan.

(3) Subject to the approval of the Minister, the Corporation shall appoint an independent person to conduct the review required by clause (2)(b).

(4) The person conducting the review shall explicitly recommend to the Minister whether the Corporation, and each of the activities reviewed, should

(a) continue to operate or be undertaken in the same manner;

(b) operate or be undertaken differently; or

(c) be wound up or discontinued,

as the case may be. 2015, c. 6, s. 26.

Annual outcomes agreement

21B Annually as required by the Minister, the Corporation shall enter into an outcomes agreement with the Minister for each fiscal year, on the terms required by the Minister. 2015, c. 6, s. 26.

Review of activities and operation

21C (1) No later than June 30, 2019, and every five years thereafter, the Corporation shall cause a review of its activities and operation to assess the benefits it delivers in support of the achievement of the economic goals of the Province.

(2) Subject to the approval of the Minister, the Corporation shall appoint an independent person to conduct the review.

(3) The person conducting the review shall explicitly recommend whether the Corporation, and each of the activities reviewed, should

(a) continue to operate in the same manner;

- (b) be made to operate differently; or
- (c) be discontinued or wound up. 2014, c. 33, s. 21.

Application of Bills of Sale Act

22 The Corporation is and is deemed to be a Board acting on behalf of Her Majesty for the purpose of subsection 3(6) of the *Personal Property Security Act*. 1994-95, c. 5, s. 22; 1995-96, c. 13, s. 73.

Consent required to wind up Corporation

23 Notwithstanding the *Companies Winding Up Act*, the Corporation may not be wound up without the consent of Her Majesty in right of the Province or, where the Principal Share is issued, the holder of the Principal Share. 1994-95, c. 5, s. 23.

Nova Scotia Innovation Corporation Limited

24 (1) The Memorandum of Agreement made as of October 6, 1994, between Her Majesty in right of the Province as represented by the Minister and Nova Scotia Innovation Corporation Limited, incorporated pursuant to the *Companies Act*, is no longer in force.

(2) All the right, title and interest of Nova Scotia Innovation Corporation Limited in any real or personal property and all rights and privileges of Nova Scotia Innovation Corporation Limited are hereby vested in the Corporation.

(3) All the obligations and liabilities of Nova Scotia Innovation Corporation Limited are the obligations and liabilities of the Corporation.

(4) Nova Scotia Innovation Corporation Limited is dissolved. 1994-95, c. 5, s. 24.

Nova Scotia Research Foundation Corporation

25 (1) Effective on a day to be determined by the Governor in Council, all the right, title and interest of the Nova Scotia Research Foundation Corporation and all rights and privileges of the Nova Scotia Research Foundation Corporation are vested in the Corporation.

(2) Effective on a day to be determined by the Governor in Council, all the obligations of the Nova Scotia Research Foundation Corporation are the obligations of the Corporation.

(3) Effective on a day to be determined by the Governor in Council, the Nova Scotia Research Foundation Corporation is dissolved.

(4) Effective on a day to be determined by the Governor in Council, Chapter 450 of the Revised Statutes, 1989, the *Research Foundation Corporation Act*, is repealed. 1994-95, c. 5, s. 25.

Regulations

- 26 (1)** The Governor in Council may make regulations
- (a) prescribing the manner in which applications for business development incentives may be made;
 - (b) prescribing the terms and conditions upon which business development incentives may be provided;
 - (c) prescribing the manner in which and conditions upon which persons may sell or transfer any asset, equipment or product in respect of which a loan has not been fully repaid;
 - (d) prescribing or limiting the size or type of assets, equipment or products for or in respect of which business development incentives may be provided;
 - (e) limiting the amount of any business development incentives;
 - (f) prescribing the terms, conditions or circumstances under which the Board in its discretion may extend, defer, adjust or compromise
 - (i) the repayment of business development incentives, or
 - (ii) the terms and conditions of any business development incentives;
 - (g) fixing rates of interest on loans;
 - (h) providing for the commuting of any payment due to the Corporation;
 - (i) respecting the security for obtaining or receiving business development incentives;
 - (j) prescribing the purposes for which business development incentives may be provided;
 - (k) respecting the records to be kept by persons to whom business development incentives have been provided;
 - (l) for the examination and audit of records and accounts and for the inspection of any premises, plant, assets, product or equipment in respect of which business development incentives have been provided;
 - (m) prescribing commercial, business or other activities that qualify and are deemed to qualify for the purpose of this Act and the regulations;
 - (ma) prescribing matters to be included in an annual outcomes agreement;

(~~ma~~[maa]) respecting the transfer of any security under subsection 6A(1);

(mb) respecting the assignment of the rights and obligations under any agreement under subsection 6A(2);

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

(o) respecting any matter authorized by this Act to be done by the regulations;

(p) respecting any matter or thing, whether of any of the foregoing kinds or not, necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) Regulations made pursuant to subsection (1) may be of general or a specific application.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 5, s. 26; 2014, c. 33, s. 22; 2015, c. 6, s. 27.
