

Nova Scotia Business Incorporated Act

CHAPTER 30 OF THE ACTS OF 2000

as amended by

2010, c. 35, s. 41; 2011, c. 23; 2014, c. 33, ss. 23-36;
2015, c. 6, ss. 32-40



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CHAPTER 30 OF THE ACTS OF 2000
amended 2010, c. 35, s. 41; 2011, c. 23; 2014, c. 33, ss. 23-36;
2015, c. 6, ss. 32-40

**An Act to Establish
Nova Scotia Business Incorporated**

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

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Short title

1 This Act may be cited as the *Nova Scotia Business Incorporated Act*.
2000, c. 30, s. 1.

Interpretation

2 In this Act,

- (a) “Board” means the Board of Directors of the Corporation;
- (aa) “business development incentive” includes assistance by way of loan, loan guarantee, payroll rebate and the purchase or guarantee of bonds, debentures, notes or other debt obligations;
- (b) “Corporation” means Nova Scotia Business Incorporated;
- (c) “Department” means the Department of Business;
- (d) *repealed 2014, c. 33, s. 23.*
- (e) “Minister” means the Minister of Business;
- (f) “Nova Scotia Fund” means the Nova Scotia Business Fund;
- (g) “Principal Share” means the Principal Share issued pursuant to this Act. 2000, c. 30, s. 2; 2014, c. 33, s. 23; 2015, c. 6, s. 32.

Act does not apply

3 This Act does not apply to a business excluded by the regulations.
2000, c. 30, s. 3.

Supervision and management

4 The Minister has the general supervision and management of this Act and the regulations. 2000, c. 30, s. 4.

Nova Scotia Business Incorporated

5 There is hereby established a body corporate to be known as Nova Scotia Business Incorporated. 2000, c. 30, s. 5.

Management of Corporation

6 The management and control of the affairs of the Corporation is vested in a Board of Directors and the Board may, subject to this Act, exercise the powers of the Corporation. 2000, c. 30, s. 6.

First Board

- 7** (1) The first Board consists of
- (a) the Deputy Minister of Economic and Rural Development and Tourism or a person designated by the Deputy Minister of Economic and Rural Development and Tourism; and

(b) up to twelve members appointed by the Governor in Council.

(2) The Governor in Council shall designate one of the members of the Board appointed pursuant to clause (1)(b) to be the Chair of the first Board.

(3) Each member of the first Board appointed by the Governor in Council serves for such term, not exceeding four years, as determined by the Governor in Council. 2000, c. 30, s. 7; 2014, c. 33, s. 24.

Board members

8 (1) Where the term of any member of the Board appointed by the Governor in Council or elected pursuant to this Act expires or any such member ceases to be a member of the Board or is unable to act prior to the expiration of the member's term of office, the Board may, subject to subsection (4), fill the vacancy by election in accordance with the by-laws of the Corporation.

(2) The Board shall determine the term of office for all members elected pursuant to subsection (1), such term not to exceed four years.

(2A) Notwithstanding subsection (2), the Minister may, at the request of the Board, extend the term of office of a member of the Board by as much as one year.

(3) No person may be appointed or elected to the Board for more than two consecutive terms.

(4) 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.

(5) The holder of the Principal Share may, in exceptional circumstances, remove a member of the Board elected pursuant to this Act.

(6) Appointments to the Board pursuant to Section 7 and elections to the Board pursuant to this Section shall take into consideration geography, size of business and business sectors. 2000, c. 30, s. 8; 2014, c. 33, s. 25.

Deputy minister not Board member

8A After the coming into force of this Section, the deputy minister of the Department is not a member of the Board and may not designate a person to be a member of the Board. 2015, c. 6, s. 33.

Effect of vacancy

9 A vacancy on the Board does not impair the right of the remaining members to Act. 2000, c. 30, s. 9.

Quorum

10 A majority of the members of the Board constitutes a quorum. 2000, c. 30, s. 10; 2014, c. 33, s. 26.

Remuneration and expenses

11 Each member of the Board is entitled to receive such remuneration and such reasonable expenses as determined by the Governor in Council. 2000, c. 30, s. 11.

Chair

12 Upon the expiry of the term of the Chair of the first Board, the Chair shall be that member of the Board elected as Chair by the members of the Board. 2000, c. 30, s. 12.

Officers

13 (1) The Board shall appoint a person who is not a member of the Board to be the President and Chief Executive Officer of the Corporation and may assign to that person such duties as the by-laws of the Corporation may determine.

(2) Subject to the by-laws of the Corporation, the Board may appoint such other officers as it from time to time deems necessary. 2000, c. 30, s. 13.

Status of Board and Corporation

14 (1) The Board is a department for the purpose of the definition of “department” in the *Conflict of Interest Act* and, for greater certainty, Section 22 of that Act applies to the members of the Board.

(2) The Corporation is a public body as defined in the *Freedom of Information and Protection of Privacy Act* and, for greater certainty, that Act applies to the Corporation. 2000, c. 30, s. 14; 2010, c. 35, s. 41.

Civil Service Act applies

14A Section 44A of the *Civil Service Act* applies *mutatis mutandis* to the members of the Board. 2014, c. 33, s. 27.

Object of Corporation

15 The objects of the Corporation are to

- (a) promote economic growth and business and social enterprise expansion in the Province by working directly with businesses and social enterprises;
- (b) attract investment to the Province;
- (c) connect businesses in the Province with export markets and opportunities outside the Province; and

(d) exercise and perform the functions and duties conferred on it by this Act and the regulations or as may be required to meet the terms of the current outcomes agreement pursuant to Section 31A, the business plan of the Corporation and the strategic plan of the Corporation. 2015, c. 6, s. 34.

Powers of Corporation

16 (1) The Corporation may do such matters and things as may be necessary for or incidental to the effective attainment of its objects and exercise of its powers and, without restricting the generality of the foregoing, may

(a) receive, acquire, take, hold, mortgage, sell, convey or otherwise dispose of or deal with real and personal property and any interest therein;

(b) subject to the regulations, provide business development incentives to encourage, sustain, improve or enable economic growth in the Province;

(c) undertake trade operations and programs that are consistent with the trade policy of the Province;

(d) deliver, in whole or in part, on behalf of the Minister such programs undertaken by the Minister as the Minister may direct;

(e) subject to the approval of the Governor in Council, make by-laws it considers necessary for the effective attainment of its objects and the exercise of its powers and for the internal control, management and administration of the Corporation;

(f) employ and contract with such persons as it may from time to time require for the purpose of carrying out its objects and duties; and

(g) levy fees related to the provision of business development incentives and other incentives or assistance provided by the Corporation pursuant to this Act.

(1A) Where on the coming into force of this subsection or as a result of an enactment the Corporation owns any common or preferred shares or other equity securities, including venture capital investments, of or in relation to a business, the Corporation may, subject to the regulations,

(a) sell, assign, transfer or otherwise dispose of the common or preferred shares or other equity securities, including venture capital investments, of or in relation to the business; or

(b) purchase or acquire additional common or preferred shares or other equity securities, including venture capital investments, of or in relation to the business.

(1B) *repealed 2015, c. 6, s. 35.*

(2) Except as otherwise provided in this Act or from time to time by order of the Governor in Council, the Corporation has all the powers of a company incorporated pursuant to the *Companies Act*.

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

- (a) distribute any of its property *in specie* among its shareholders;
- (b) amalgamate or merge with one or more other companies;
- (c) continue itself in a jurisdiction other than the Province or change its head office or registered office;
- (d) enter into any compromise or arrangement with its creditors or any class of creditors or its shareholders or any class of its shareholders;
- (e) allot or issue shares in its capital stock;
- (f) borrow money, finance or re-finance the Corporation or give security;
- (g) appoint, remunerate or remove its chief executive officer, its chief financial officer or its chief operating officer;
- (h) declare or pay dividends on the common shares of the Corporation; or
- (i) consolidate, convert, subdivide, exchange, cancel or otherwise alter or reorganize the share capital of the Corporation.

(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) The Corporation shall not

- (a) sell all or substantially all of its business or assets;
- (b) wind up or dissolve or surrender its certificate of incorporation; or

(c) 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* (Canada) or any similar legislation. 2000, c. 30, s. 16; 2011, c. 23, s.1; 2014, c. 33, s. 29; 2015, c. 6, s. 35.

Transfers and assignments by Corporation

16A (1) Where required to do so by the Minister, the Corporation shall transfer to any person any security that the Corporation owns, on such terms and conditions as the Minister may prescribe.

(2) Where required to do so by the Minister, the Corporation shall assign to any person the rights and obligations under any agreement that the Corporation has entered into with a third party for the purpose of investing venture capital in the third party, on such terms and conditions as the Minister may prescribe and, for greater certainty, such direction must be considered a disposal of a material portion of the Corporation's assets or undertaking. 2014, c. 33, s. 30; 2015, c. 6, s. 36.

Fiscal year

17 The fiscal year of the Corporation is the same as the fiscal year of the Province. 2000, c. 30, s. 17.

Capital stock

18 (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 Corporation 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 in whole or in part by any person not ordinarily a resident of the Province.

(5) The Principal Share shall be beneficially owned by Her Majesty in right of the Province. 2000, c. 30, s. 18.

Increase in capital

19 The capital stock of the Corporation may be increased, from time to time, by the Governor in Council. 2000, c. 30, s. 19.

Continuation of Development Fund

20 The Nova Scotia Business Development Corporation Fund established pursuant to the *Business Development Corporation Act* is continued as the Nova Scotia Business Fund. 2000, c. 30, s. 20.

Transfers to Fund

21 The Governor in Council, upon the recommendation of the Board, may from time to time transfer to the Nova Scotia 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. 2000, c. 30, s. 21.

Treatment of repayments and recoveries

22 On the coming into force of this Act, repayments and recoveries in respect to sums previously loaned by and outstanding to the Nova Scotia Business Development Corporation shall be paid into the Nova Scotia Fund and may be relaned by the Corporation. 2000, c. 30, s. 22.

Guarantee is charge

23 Any guarantee of a loan made pursuant to this Act is a charge upon the Nova Scotia Fund in the amount of the guarantee from time to time authorized. 2000, c. 30, s. 23.

Treatment of repayment or recovery

24 Any repayment or recovery made in respect of any transaction out of the Nova Scotia Fund shall be credited to the Fund. 2000, c. 30, s. 24.

Exemption from taxation

25 The Corporation, its property and assets are not subject to taxation. 2000, c. 30, s. 25.

Tax assessment

26 (1) A person, firm or association that occupies real property of the Corporation shall be assessed and rated for taxes pursuant to the *Assessment Act* in

respect of that property for the municipal fiscal year 2000-01 and each subsequent municipal fiscal year, but the property itself is not liable.

(2) Notwithstanding subsection (1), a person, firm or association who occupies an incubator mall or part thereof that is designated as such by the Corporation for the purpose of this Act, is exempt from taxation under the *Assessment Act* in respect of the mall or part thereof so designated.

(3) The Corporation may designate an incubator mall that is owned by the Corporation or a part thereof for the purpose of subsection (2). 2000, c. 30, s. 26.

Effect of mortgage, pledge or charge

27 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 is deemed to be a mortgage, pledge or charge against any real and personal property of Her Majesty in right of the Province. 2000, c. 30, s. 27.

Powers of Minister of Finance and Auditor General

28 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 to audit by the Auditor General or a person designated by the Auditor General. 2000, c. 30, s. 28; 2014, c. 33, s. 31.

Financial statements and reports

29 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 Corporation for the previous fiscal year, together with a report concerning the work of the Corporation during the previous fiscal year. 2015, c. 6, s. 37.

Outcomes agreement

30 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. 37.

Annual business plan

31 Annually as required by the Minister, the Corporation shall submit to the Minister for approval a detailed business plan for the Corporation for the following fiscal year. 2015, c. 6, s. 37.

Five-year strategic plan and evaluation

32 (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. 37.

Five-year review

32A (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. 34.

Status of Corporation and employees

33 (1) *repealed 2015, c. 6, s. 38.*

(2) A person employed or engaged by the Corporation is not an officer, servant or agent of Her Majesty in right of the Province. 2000, c. 30, s. 33; 2015, c. 6, s. 38.

Regulations

34 (1) The Governor in Council may make regulations

- (a) prescribing types of business development incentives and any limits that apply to types of business development incentives;
- (b) prescribing the criteria, eligibility, terms and conditions upon which business development incentives may be provided or amended;
- (c) prescribing matters to be addressed in an annual business plan [under Section 31] and an annual outcomes agreement under Section ~~31A~~ [30];
- (d) prescribing circumstances when consents are required from the Minister or the Governor in Council before a business development incentive may be provided by the Corporation;
- (e) prescribing the purposes for which business development incentives may be provided;
- (f) prescribing businesses that are excluded from application of this Act under Section 3;
- (g) prescribing business activities that are ineligible for business development incentives;
- (h) where the Corporation owns any common or preferred shares or other equity securities, including venture capital investments, of or in relation to a business, respecting
 - (i) the sale, assignment, transfer or disposition of the common or preferred shares or other equity securities, including venture capital investments, of or in relation to the business, and
 - (ii) the purchase or acquisition by the Corporation of additional common or preferred shares or other equity securities, including venture capital investments, of or in relation to the business;
- (i) respecting the transfer of any security pursuant to subsection 16A(1);
- (j) respecting the assignment of the rights, obligations and liabilities under any agreement pursuant to subsection 16A(2);
- (k) prescribing whether a business development incentive or any type of business development incentive is provided from the Nova Scotia Fund, the Corporation's budget or another source;
- (l) to (lf) *repealed 2015, c. 6, s. 39.*
- (m) respecting any matter authorized by this Act to be done by regulation;
- (n) defining any word or expression used but not defined in this Act;

(o) deemed necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2000, c. 30, s. 34; 2014, c. 33, s. 35; 2015, c. 6, s. 39.

Order for disposition of certain assets

35 The Governor in Council may make an order providing for the disposition of the assets and obligations of the Nova Scotia Business Development Corporation. 2000, c. 30, s. 35.

Effect of reference

36 A reference in any enactment, resolution or order in council or in any document or instrument of any kind to the Nova Scotia Business Development Corporation shall be read and construed as a reference to the Corporation. 2000, c. 30, s. 36.

Designated persons

37 (1) In this Section, “designated person” means an employee of the Province who was appointed in accordance with the *Civil Service Act* and is determined by the Minister to become an employee of the Corporation.

(2) The Minister may determine who is a designated person.

(3) Every designated person becomes an employee of the Corporation and ceases to be a person appointed in accordance with the *Civil Service Act*.

(4) The continuity of employment of a designated person is not broken by the effect of this Section.

(5) The *Civil Service Act* and the regulations made pursuant to that Act and the *Civil Service Collective Bargaining Act* do not apply to a designated person.

(6) Subject to subsection (9), every designated person is employed by the Corporation on the same or equal terms and conditions of employment as those under which the employee was employed as an employee by Her Majesty in right of the Province until changed by contract of employment.

(7) Every designated person is deemed to have been employed with the Corporation for the same period of employment that the employee was credited with as an employee of the Province.

(8) A designated person is entitled to all vacation leave accumulated, less any vacation arrears that accrued, while the designated person was employed by Her Majesty in right of the Province.

(9) Notwithstanding Section 31 of the *Trade Union Act*, every designated person who, before being designated, was subject to a collective agreement, ceases to be subject to that collective agreement and becomes

(a) subject to the collective agreement between the Corporation and the Nova Scotia Government Employees Union; and

(b) a part of the bargaining unit represented by Nova Scotia Government Employees Union Local 44.

(10) *repealed 2014, c. 33, s. 36.*

(11) Each designated person who was an employee within the meaning of the *Public Service Superannuation Act* before being designated and each designated person in a bargaining unit whose collective agreement provided for participation in the Public Service Superannuation Plan before being designated is deemed to continue to be a person employed in the public service of the Province for all purposes of the *Public Service Superannuation Act* and service in the employment of the Corporation is deemed to be service in the public service of the Province.

(12) Subject to any applicable collective agreement or contract of employment, each designated person who, before being designated, was covered by the Nova Scotia Public Service Long Term Disability Plan or was included in a bargaining unit whose collective agreement provided for long term disability benefits under the Nova Scotia Public Service Long Term Disability Plan is deemed to continue to be a person to whom the Nova Scotia Public Service Long Term Disability Plan applies.

(13) The obligations and liabilities of Her Majesty in right of the Province in respect of designated persons are the obligations and liabilities of the Corporation, including all employee benefits and entitlements.

(14) *repealed 2014, c. 33, s. 36.*

2000, c. 30, s. 37; 2014, c. 33, s. 36; 2015, c. 6, s. 40.

Public Service Act amended

38 *amendment of the Public Service Act.* 2000, c. 30, s. 38.

Repeal

39 Chapter 49 of the Revised Statutes, 1989, the *Business Development Corporation Act*, is repealed. 2000, c. 30, s. 39.

Repeal

40 Chapter 5 of the Acts of 1994, the *Economic Renewal Act*, is repealed. 2000, c. 30, s. 40.

Proclamation

41 Sections 14 and 15, clauses 16(1)(a) to (c) and (e) to (g), subsections 16(2) to (6), Section 17 and Sections 19 to 32 and 36 to 40 come into force on such day as the Governor in Council orders and declares by proclamation. 2000, c. 30, s. 41.

Proclaimed (ss. 14, 15, 16(1)(a)-(c), (e)-(g), (2)-(6), 17, 19, 25-32, 37, 38)	-	July 26, 2001
In force	-	July 30, 2001

Proclaimed (ss. 20-24, 36)	-	November 6, 2001
In force	-	November 6, 2001

Proclaimed (ss. 39, 40)	-	November 6, 2007
In force	-	November 6, 2007
