



Province of Saskatchewan

Order in Council 498/2018

Approved and Ordered: 27 September 2018

~~Lieutenant Governor~~ Administrator

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, makes *The Saskatchewan Technology Start-up Incentive Regulations* in accordance with the attached Schedule.

President of the Executive Council

(For administrative purposes only.)

Recommended by: **Minister Responsible for Innovation Saskatchewan**

Authority: ***The Saskatchewan Technology Start-up Incentive Act, section 48***

JAG DM - 19-09-18

SCHEDULE to OC 498/2018

Title

1 These regulations may be cited as *The Saskatchewan Technology Start-up Incentive Regulations*.

Definitions and Interpretation

2(1) In these regulations:

“**Act**” means *The Saskatchewan Technology Start-up Incentive Act*;

“**applicant**” means a technology-based start-up business that applies to the minister pursuant to section 4 of the Act;

“**associate**”, if used to indicate a relationship with a person, means:

(a) a corporation of which the person owns, directly or indirectly, shares carrying 10% or more of the voting rights for the election of the directors of the corporation;

(b) a partner of the person;

(c) a participant in a joint venture with the person;

(d) a trust or estate:

(i) in which the person has, in the opinion of the minister, a substantial beneficial interest; or

(ii) for which the person serves as trustee or in a similar capacity;

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

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

“**number of employees**” means the total of:

(a) the number of full-time employees of the applicant, as evidenced by the applicant to the satisfaction of the minister; and

(b) the number of full-time equivalent employees of the applicant, as calculated pursuant to subsection (3).

- (2) For the purposes of the Act and these regulations, a person is an eligible investor if:
- (a) the person is an accredited investor within the meaning of National Instrument 45-106, as adopted pursuant to *The Securities Commission (Adoption of National Instruments) Regulations*; and
 - (b) in the case of:
 - (i) an individual, subsection 6(1) of *The Income Tax Act, 2000* applies to the person;
 - (ii) a corporation, subsection 54(1) of *The Income Tax Act, 2000* applies to the corporation.
- (3) For the purposes of determining the number of employees as that term is defined in subsection (1):
- (a) the minister shall convert to the full-time equivalent for the purposes of that definition, in any manner the minister considers appropriate, based on evidence that is:
 - (i) provided by an applicant with respect to permanent, part-time employees; and
 - (ii) otherwise satisfactory to the minister;
 - (b) if the minister determines that the applicant has arranged to have persons performing work or services for the applicant under any arrangement that is not a contract of employment for the purposes of meeting the requirements of subclause 4(2)(a)(i) of the Act, the minister may deem those persons to be employees; and
 - (c) if the minister makes a determination pursuant to clause (b), the minister shall:
 - (i) give notice of that determination to the applicant to which that determination applies; and
 - (ii) provide the applicant with an opportunity to make representations respecting the minister's determination.

Registration requirements – eligible start-up business

3(1) For the purposes of the minister's determination regarding whether the applicant is to be registered as an eligible start-up business in accordance with section 4 of the Act, the applicant must provide:

- (a) its business plan, if available, or other documentation that describes the applicant's business strategy in sufficient detail to allow the minister to assess the applicant's eligibility;
- (b) a copy of its most recent:
 - (i) annual financial statements, if any; and
 - (ii) financial forecast, if any;

- (c) a description of the new product, service or process that the applicant intends to create as a result of the development of a novel technology or the use or combining of technology in a novel way;
 - (d) evidence that the applicant is permanently established in Saskatchewan;
 - (e) if available, a copy of its most recent income tax return and the notice of assessment issued by the Canada Revenue Agency for the taxation year for which that return was filed;
 - (f) a statement of the amount of equity capital to be raised by the applicant by issuing equity shares;
 - (g) a description of its proposed use of the equity capital raised;
 - (h) a statement certifying that the applicant is an eligible small business according to the requirements set out in subclauses 4(2)(a)(i) to (iv) of the Act;
 - (i) a statement, signed by an officer of the applicant, attesting to the completeness and accuracy of the information provided in the application and the accompanying documents; and
 - (j) any additional information, undertakings or documents that the minister considers necessary to determine or verify the applicant's eligibility to issue shares as eligible investments.
- (2) In addition to the requirements for registration set out in subsection (1) and in subclauses 4(2)(a)(i) to (iv) of the Act, the applicant must provide evidence satisfactory to the minister that, at the time of the application, the applicant's product or product concept is accepted by the market for which it is intended and that the market is willing to purchase the product.
- (3) The minister shall reject an application if the minister is satisfied that the applicant has failed to comply with any of the requirements of subsections (1) and (2).
- (4) For the purposes of assessing whether the technology that is the subject of an application qualifies as appropriate as described in clause 4(2)(b) of the Act, the minister shall have regard to:
- (a) the extent to which the technology or its use or combination is novel;
 - (b) the manner by which the applicant plans to market the technology;
 - (c) whether there is a plan to increase the scale of the new company through increased sales and market penetration beyond Saskatchewan; and
 - (d) any other circumstances that the minister considers relevant.
- (5) The minister, in completing the assessment mentioned in subsection (4), may engage the services of or retain any technical, professional or other advisors that the minister considers necessary.
- (6) A certificate of registration that is issued by the minister pursuant to subsection 4(3) of the Act is to contain the following:

- (a) the name of the corporation being issued the certificate;
- (b) the number assigned to the corporation by the Director of Corporations pursuant to *The Business Corporations Act*;
- (c) the date on which the certificate is issued.

Register of eligible start-up businesses

4 The register mentioned in section 5 of the Act must contain the following information with respect to each eligible start-up business:

- (a) the corporate name of the eligible start-up business;
- (b) the address and contact information of the eligible start-up business;
- (c) a description, in summary form, of the information provided by the eligible start-up business pursuant to clause 3(1)(a);
- (d) the amount of equity capital that the eligible start-up business intends to raise;
- (e) the current number of employees and the percentage of those employees employed in Saskatchewan;
- (f) the names of and contact information for the incorporators and officers of the eligible start-up business.

Ineligible investments re section 6 of the Act

5 For the purposes of clause 6(1)(c) of the Act, an investment is an eligible investment if the equity shares issued do not:

- (a) create a debt between the holder or beneficial owner of the equity shares and any other person;
- (b) entitle the holder or beneficial owner of the equity shares to reduce the impact of any loss the holder or beneficial owner sustains in holding or disposing of the equity shares; or
- (c) provide the holder or beneficial owner of the equity shares with the right to require the eligible start-up business to repurchase the shares before the expiry of 2 years after the date of issue.

Limits on equity capital

6 For the purposes of subsection 7(1) of the Act, an eligible start-up business must not raise equity capital in excess of \$1,000,000.

Related persons re section 8 of the Act

7 For the purposes of subsection 8(1) of the Act, an eligible investor must not make or hold an investment in an eligible start-up business in conjunction with any related persons within the meaning of subsections 251(2) to (6) of the *Income Tax Act* (Canada).

Issuance of tax credit certificates – conditions to be met

8(1) Before issuing a tax credit certificate to eligible investors pursuant to subsection 10(1) of the Act, the minister must be satisfied that the following conditions with respect to the eligible start-up business in which the eligible investors have invested have been met:

- (a) the eligible start-up business has been registered in accordance with section 4 of the Act;
- (b) the eligible start-up business' equity capital has been raised in accordance with section 6 of the Act and does not exceed the limit set out in section 6 of these regulations;
- (c) each of the eligible investors in the eligible start-up business acquired the equity shares in accordance with section 7 of the Act;
- (d) no tax credit certificate has previously been issued with respect to the equity shares mentioned in clause (c);
- (e) the eligible start-up business and eligible investors have otherwise complied with the Act and these regulations;
- (f) any other reasonable conditions that the minister considers appropriate with respect to the issuing of, and amounts on, the tax credit certificates.

(2) The minister may cause the conditions mentioned in clause (1)(f) to be posted on the ministry's website and to be made known to the public in any other manner that the minister considers appropriate.

Prohibited use of funds

9 For the purposes of section 11 of the Act, an eligible start-up business must not use equity capital for any of the following purposes:

- (a) lending;
- (b) purchasing real property, unless the purchase is ancillary to the business activities of the eligible start-up business;
- (c) depositing in a high interest savings account;
- (d) acquiring Guaranteed Investment Certificates;
- (e) acquiring or trading in securities not otherwise permitted by the Act or these regulations;
- (f) purchasing goods or services from the eligible start-up business' eligible investors, affiliates or other related persons, other than goods or services purchased at fair market value;
- (g) paying a debt obligation, unless that payment is considered necessary by the minister for the financial viability of the eligible start-up business;
- (h) subject to subsection 14(1), purchasing or redeeming previously-issued shares of the eligible start-up business or its affiliates within 2 years after the date of issue of the equity shares;

- (i) paying dividends;
- (j) retiring any part of a liability to a shareholder of the eligible start-up business or one of its affiliates, or of a liability to a shareholder's associate or affiliate;
- (k) funding all or part of the purchase by the eligible start-up business of any of the assets of a proprietorship, partnership, joint venture, trust or corporation at a price that is greater than the fair market value of the assets purchased.

Revocation or suspension of registration

10 For the purposes of subsection 12(1) of the Act, the minister may suspend or revoke the registration of an eligible start-up business if the minister determines that the eligible start-up business:

- (a) is contravening or has contravened the Act or these regulations or a condition that the minister imposes pursuant to the Act or these regulations;
- (b) has misrepresented any information provided to the minister, either knowingly or through circumstances amounting to negligence;
- (c) has obtained its registration fraudulently or by providing false or misleading information or documents;
- (d) has failed to provide information, records or documents when they are required pursuant to the Act;
- (e) has provided information, records or documents mentioned in clause (d) that contain false or misleading information;
- (f) has applied any equity capital raised for a use prohibited pursuant to section 9;
- (g) at any time during the 2 years following the date on which the eligible start-up business raises any equity capital, does not comply with subclauses 4(2)(a)(ii) and (iv) and clause 4(2)(b) of the Act; or
- (h) has not raised any equity capital within 2 years after the eligible start-up business' registration pursuant to subsection 4(3) of the Act.

Permitted transfer of equity shares

11(1) In this section:

- (a) "**registered retirement income fund**" means a registered retirement income fund as defined in section 146.3 of the *Income Tax Act* (Canada);
- (b) "**registered retirement savings plan**" means a registered retirement savings plan as defined in section 146 of the *Income Tax Act* (Canada);
- (c) "**tax-free savings account**" means a tax-free savings account within the meaning of section 146.2 of the *Income Tax Act* (Canada).

(2) For the purposes of subsection 13(1) of the Act, an eligible start-up business may transfer an equity share mentioned in that subsection within 2 years after the date of issue in any of the following circumstances:

- (a) the shareholder is insolvent;
- (b) the shareholder transfers the equity share to the shareholder's:
 - (i) tax-free savings account or registered retirement savings plan, but only if the equity share is a qualified investment with respect to the tax-free savings account or registered retirement savings plan; or
 - (ii) registered retirement income fund, but only if:
 - (A) the equity share is a qualified investment with respect to the registered retirement income fund; and
 - (B) the shareholder is no longer eligible to contribute to a registered retirement savings plan;
- (c) the shareholder directs a transfer of the equity share to a spousal registered retirement savings plan;
- (d) the shareholder is deceased and the personal representative of the shareholder's estate requests a transfer of the equity share to the estate or a named beneficiary;
- (e) the eligible start-up business initiates a share exchange, share right or share reorganization as a result of an acquisition or amalgamation that keeps the substantive operations of the eligible start-up business in Saskatchewan.

Revocation of registration – payment of interest

12(1) For the purposes of subsection 14(1) of the Act, the rate of interest per annum with respect to the payment by an eligible start-up business of an amount equal to the aggregate of all the amounts of tax credit certificates previously issued to the business is the rate equal to the sum of:

- (a) the prime lending rate of the bank holding the general revenue fund as determined and adjusted in accordance with this section; and
 - (b) 3%.
- (2) The interest rate set out in this section is to be determined on June 15 and December 15 in each year and:
- (a) the interest rate as determined on June 15 applies to interest on the aggregate amount mentioned in subsection (1) accruing from July 1; and
 - (b) the interest rate as determined on December 15 applies to interest on the aggregate amount mentioned in subsection (1) accruing from January 1 of the following year.

(3) Interest payable pursuant to subsection (1) is payable for the period commencing on the day that is 21 days after the day on which the minister revoked the registration of the eligible start-up business pursuant to section 12 of the Act and ending on the day on which the amount owing pursuant to that subsection is received by the minister responsible for the administration of *The Income Tax Act, 2000*.

Payment of lesser amount re subsection 14(2) of the Act

13 For the purposes of subsection 14(2) of the Act, the circumstances in which the minister responsible for the administration of *The Income Tax Act, 2000* may specify an amount to be paid by an eligible start-up business that is less than the amount determined in accordance with subsection 14(1) of the Act are as follows:

- (a) the eligible start-up business has conducted its business and affairs in a manner consistent with the Act;
- (b) the equity share issued by the eligible start-up business was not redeemed, acquired or cancelled for at least 12 months.

Exceptions to requirement to repay tax credit, payment of interest re section 17 of the Act

14(1) An eligible start-up business may redeem, acquire or cancel an equity share issued pursuant to the Act within 2 years after the date of issue of the equity share without being required to pay the minister responsible for the administration of *The Income Tax Act, 2000* as required by subsection 17(1) of the Act, if:

- (a) the shareholder is insolvent; or
- (b) the shareholder is deceased and the personal representative of the shareholder's estate consents to the redemption, acquisition or cancellation by the eligible start-up business of the equity share, as the case may be, as a reasonable method of carrying out the personal representative's responsibilities with respect to the winding-up of the estate.

(2) For the purposes of subsection 17(3) of the Act, the interest payable on any amounts that must be paid to the minister responsible for the administration of *The Income Tax Act, 2000* is to be calculated in accordance with subsection 67.2(12) of that Act.

Annual return

15(1) For the purposes of subsection 18(1) of the Act, an eligible start-up business' annual return must be accompanied by all of the following:

- (a) a copy of the securities register of the eligible start-up business;
- (b) a copy of the most recent financial statements of the eligible start-up business, prepared in accordance with subsection (2);
- (c) a copy of the most recent annual return of the eligible start-up business filed with the Director of Corporations pursuant to section 273 of *The Business Corporations Act*.

- (2) The financial statements mentioned in clause (1)(b) must be:
- (a) prepared in accordance with generally accepted accounting principles published by Chartered Professional Accountants of Canada, as amended from time to time; and
 - (b) reviewed by a member in good standing of a recognized accounting profession that is regulated by an Act.

Requirements for registration of a venture capital corporation

16(1) For the purposes of subsection 19(2) of the Act, a venture capital corporation must meet the following requirements:

- (a) it must have mechanisms in place satisfactory to the minister to track eligible investor contributions to invested eligible start-up businesses for the purposes of tax credit issuance;
 - (b) it must have equity capital of at least \$25,000;
 - (c) it must have a share structure consisting of one or both of the following:
 - (i) common shares having no special rights or restrictions;
 - (ii) common shares having special rights relating only to the redemption of the shares by the corporation.
- (2) If an existing corporation intends to be registered as a venture capital corporation, and for that purpose establishes a separate fund for the purposes of raising funds to invest in eligible start-up businesses, the corporation must have articles that restrict the business of the separate fund to assisting the development of eligible start-up businesses by providing business and managerial expertise to eligible start-up businesses in which the corporation has made or proposes to make an eligible investment.

Register of venture capital corporations

17 For purposes of subsection 20(3) of the Act, the register of venture capital corporations must contain the following information with respect to each venture capital corporation on the register:

- (a) its legal name;
- (b) the date on which it was registered pursuant to Part 3 of the Act;
- (c) the physical address of its registered office, consisting of one of the following:
 - (i) the street address of the registered office, if any;
 - (ii) if there is no street address, a legal land description of the land on which the registered office is located, including the rural municipality name and number;
- (d) the mailing address of its office, if different from the physical address;
- (e) its principal place of business;

- (f) its email address;
- (g) the name, title of office held and contact information for each of the venture capital corporation's officers.

Requirements for venture capital corporations

18(1) For the purposes of subsection 22(1) of the Act, a venture capital corporation:

- (a) must maintain its share structure in accordance with clause 16(1)(c); and
- (b) must not, in a given year, apply to the minister pursuant to section 29 of the Act for tax certificates representing more than 33% of the total funds available for tax credits pursuant to the Act.

(2) For the purposes of subsection 22(2) of the Act, a share certificate issued by a venture capital corporation must state the following information:

- (a) the percentage of the venture capital corporation's equity represented by the share, based on the total number of shares issued by the venture capital corporation;
- (b) that the equity shares that are the subject of the share certificate have been issued pursuant to, and the venture capital corporation issuing the share certificate is subject to, the Act.

Investment in an eligible start-up business by a venture capital corporation

19(1) Subject to subsection (2), for the purposes of section 23 of the Act, a venture capital corporation may make an investment in an eligible start-up business if all of the following criteria are met:

- (a) the eligible start-up business has a valid certificate of registration pursuant to section 4 of the Act;
- (b) the investment consists or will consist of:
 - (i) the direct acquisition from the eligible start-up business of equity shares issued for raising new equity capital;
 - (ii) the acquisition of equity shares that are issued by the eligible start-up business under a prospectus, offering memorandum or other disclosure document that is acceptable to the minister; or
 - (iii) the direct acquisition from an affiliate of the eligible start-up business of equity shares of the affiliate;
- (c) the funds paid by the venture capital corporation for any equity shares mentioned in subclause (b)(iii) are in turn invested in equity shares of the eligible start-up business by the affiliate within 30 days after investment approval.

(2) Any investment made by a venture capital corporation pursuant to subsection (1) requires the written approval of the minister before a tax credit certificate may be issued.

Investment for certain purposes prohibited

20 For the purposes of subsection 24(1) of the Act, a venture capital corporation must not make or hold an investment in an eligible start-up business if all or part of the proceeds of that investment are directly or indirectly used or intended to be used by the eligible start-up business for any of the following:

- (a) lending;
- (b) purchasing real property, unless the purchase is ancillary to the business activities of the eligible start-up business;
- (c) depositing in a high interest savings account;
- (d) acquiring Guaranteed Investment Certificates;
- (e) acquiring or trading in securities not otherwise permitted by the Act or these regulations;
- (f) purchasing goods and services from the venture capital corporation, other than goods or services purchased at fair market value;
- (g) paying a debt obligation, unless that payment is considered necessary by the minister for the financial viability of the eligible start-up business;
- (h) subject to subsection 14(1), purchasing or redeeming previously issued shares of the eligible start-up business or its affiliates within 2 years after the date of issue of the equity shares;
- (i) retiring any part of a liability to a shareholder of the eligible start-up business or one of its affiliates or a liability to a shareholder's associate or affiliate;
- (j) paying dividends;
- (k) funding all or part of the purchase by the eligible start-up business of any of the assets of a proprietorship, partnership, joint venture, trust or corporation at a price that is greater than the fair market value of the assets purchased.

Prohibitions re control of eligible start-up businesses by venture capital corporations

21 For the purposes of subsection 25(1) of the Act, the prohibition with respect to investments in eligible start-up businesses applies to related persons within the meaning of subsections 251(2) to (6) of the *Income Tax Act* (Canada).

Prohibitions re non-arm's length investments

22(1) For the purposes of subsection 26(1) of the Act, a venture capital corporation must not make or hold an investment in an eligible start-up business if any of the shares of the venture capital corporation are held by:

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

- (c) a voting trust for which the trustee votes shares of the eligible start-up business;
 - (d) the eligible start-up business or an associate or affiliate of the eligible start-up business.
- (2) For the purposes of subsection 26(2) of the Act, a related person is a related person within the meaning of subsections 251(2) to (6) of the *Income Tax Act* (Canada).

Tax credit certificates

23 For the purposes of subsection 29(3) of the Act, the minister shall issue a tax credit certificate if the minister is satisfied that all of the following requirements have been met:

- (a) the venture capital corporation is complying with the Act and these regulations;
- (b) no tax credit certificate pursuant to that subsection has been previously issued with respect to the shares of the shareholders of the venture capital corporation;
- (c) the equity capital that is the subject of the application for the tax credit certificate is not an eligible investment as defined in *The Labour-sponsored Venture Capital Corporations Act* with respect to which a tax credit has been claimed pursuant to that Act;
- (d) the shareholder mentioned in that subsection acquired the shares directly from the venture capital corporation or its agent acting on its behalf;
- (e) the shareholder mentioned in that subsection, if an individual, was resident in Saskatchewan on the date on which the shareholder subscribed for the shares.

Interest on repayment of tax credit amounts – venture capital corporations

24 For the purposes of subsection 30(3) of the Act, section 12 of these regulations applies, with any necessary modification.

Liability to repay tax credits

25 A venture capital corporation is liable to pay the minister responsible for the administration of *The Income Tax Act, 2000* pursuant to section 32 of the Act if it fails to notify the minister within 30 days after:

- (a) it ceases to maintain a permanent establishment, as defined in *The Income Tax Act, 2000*;
- (b) it changes its registered office pursuant to *The Business Corporations Act*;
- (c) it acquires a different or additional place of business or permanent establishment, as defined in *The Income Tax Act, 2000*, in Saskatchewan or elsewhere;
- (d) it changes its fiscal year end;
- (e) it directly or indirectly acquires, redeems or cancels one of its own shares; or
- (f) it fails to comply with section 22, 23, 24, 25 or 26 of the Act.

Revocation or suspension of registration of a venture capital corporation

26 In addition to the circumstances set out in clauses 33(1)(a) to (d) of the Act, the minister may suspend or revoke the certificate of registration of a venture capital corporation if:

- (a) the venture capital corporation has been ordered by a court of competent jurisdiction to dissolve or otherwise wind up its business and affairs;
- (b) the venture capital corporation is insolvent; or
- (c) the shareholders of the venture capital corporation pass a resolution to dissolve or otherwise wind up its business and affairs.

Annual return

27 For the purposes of section 34 of the Act, a venture capital corporation's annual return with respect to the preceding fiscal year must be accompanied by a statement respecting all of the following, pertaining to the venture capital corporation's activities pursuant to the Act and these regulations:

- (a) the amount of equity capital raised by the venture capital corporation;
- (b) the aggregate value at cost of investments made by the venture capital corporation, the name of each eligible start-up business the shares of which the venture capital corporation sold and the value at cost of those shares;
- (c) the aggregate amount of expenses incurred by the venture capital corporation and the amount paid as management fees;
- (d) whether any fees or remuneration were paid to the shareholders, officers or directors of the venture capital corporation or to any associate or affiliate of any of them by an eligible start-up business in which the venture capital corporation made an eligible investment;
- (e) whether the articles of the venture capital corporation were amended in a manner that changed the share structure of the venture capital corporation or altered any rights or restrictions attached to any share of the venture capital corporation;
- (f) the amount of all dividends received by the venture capital corporation with respect to an eligible investment made by it in an eligible start-up business;
- (g) whether the venture capital corporation redeemed any of its shares;
- (h) whether a share redemption mentioned in clause (g) was reported to the minister;
- (i) in relation to a share redemption mentioned in clause (g) that was not reported to the minister:
 - (i) the name of each investor whose shares were redeemed;
 - (ii) the date of each redemption;
 - (iii) the number of shares redeemed in each redemption;

- (iv) the investor's cost of each share redeemed in each redemption; and
- (v) the consideration paid by the venture capital corporation with respect to the redemption;

(j) whether the venture capital corporation paid any expenses to any person or group of persons who, on the date on which the payment was made, directly or indirectly controlled the venture capital corporation.

Coming into force

28(1) Subject to subsection (2), these regulations come into force on the day on which section 1 of *The Saskatchewan Technology Start-up Incentive Act* comes into force.

(2) If these regulations are filed with the Registrar of Regulations after the day on which section 1 of *The Saskatchewan Technology Start-up Incentive Act* comes into force, these regulations come into force on the day on which they are filed with the Registrar of Regulations.