



Employee Investment Act

EMPLOYEE INVESTMENT REGULATION

B.C. Reg. 341/97

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Consolidated Regulations of British Columbia

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This consolidation includes any amendments deposited and in force as of the currency date at the bottom of each page. See the end of this regulation for any amendments deposited but not in force as of the currency date. Any amendments deposited after the currency date are listed in the B.C. Regulations Bulletins. All amendments to this regulation are listed in the *Index of B.C. Regulations*. Regulations Bulletins and the Index are available online at www.bclaws.ca.

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Employee Investment Act

EMPLOYEE INVESTMENT REGULATION

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Definitions and interpretation

1 (1) In this regulation:

“**Act**” means the *Employee Investment Act*;

“**RRSP**” has the same meaning as registered retirement savings plan in the *Income Tax Act* (Canada);

“**special resolution**” means

- (a) a resolution passed by a majority of not less than 3/4 of the votes cast by those shareholders of a corporation who, being entitled to do so, vote in person or by proxy at a general meeting of the corporation
 - (i) of which notice as the articles provide, and not being less than 21 days’ notice specifying the intention to propose the resolution as a special resolution, has been given, or
 - (ii) if every shareholder entitled to attend and vote at the meeting agrees, at a meeting of which less than 21 days’ notice has been given, or
- (b) a resolution consented to in writing by every shareholder of a corporation who would have been entitled to vote in person or by proxy at a general meeting of the corporation.

(2) For the purpose of the definition of “special resolution” in subsection (1), a shareholder who is receiving, or is proposed to receive, any fees or remuneration from the corporation or whose associate or affiliate is receiving, or is proposed to receive, any fees or remuneration from the corporation is deemed to be not entitled to vote in person or by proxy at a general meeting in respect of a special resolution that seeks to approve or ratify the payment of any fees or remuneration by the corporation.

(3) In the Act and this regulation:

“**all amounts received**” does not include amounts received from an employee venture capital corporation in respect of any permitted investments described in section 22 (1) (c) of the Act and for which no application has been made for a release of funds from the investment protection account established for the employee venture capital corporation under section 23 of the Act;

“**associated group of persons**” means a group of persons each of whom is associated one with another through one or more of the following relationships:

- (a) as spouse, parent, grandparent, child, grandchild, or sibling;
- (b) as parent, grandparent, child, grandchild, or sibling of a spouse;

“**cash**” and “**money**” mean lawful currency of Canada;

“**consent of a majority of the eligible shareholders**” includes

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- (a) in the case of a matter placed before a duly called meeting of the shareholders of an employee venture capital corporation, a resolution passed by a majority of the votes cast at the meeting in person or by proxy, and
 - (b) in the case of a matter described in an information circular and ballot form prepared by an employee venture capital corporation and mailed to all of its shareholders, a majority of the ballot responses received by the corporation by the deadline set out in the circular approve of the matter.
- (4) Authority repealed. [2002-39-1.]
- (5) In the definition of “eligible employee” in the Act, employment on a continuing basis includes seasonal part time employment for not less than 3 months each year for 2 or more consecutive years.
- (6) For purposes of paragraph (b) of section 1 (5) of the Act, the following circumstances are prescribed as circumstances to which that paragraph does not apply:
- (a) in the case of an employee venture capital corporation that does not have a restricted constitution, the employee venture capital corporation is not seeking to exercise control over the issuer of the option, warrant or rights.
- [am. B.C. Regs. 440/98; 422/99, s. (a); 64/2021, s. 8.]

PART 1 – GENERAL**Eligible business prescribed matters**

- 2** (1) For the purposes of paragraph (c) of the definition of “eligible business” in section 1 (1) of the Act, the percentage of wages and salaries that are paid to employees who regularly work in British Columbia must be calculated in accordance with the formula set out in section 6 of this regulation, with the necessary changes if the eligible business is not a corporation.
- (2) For the purposes of paragraph (d) of the definition of “eligible business” in section 1 (1) of the Act,
- (a) all affiliates of the eligible business, other than the following affiliates, are prescribed affiliates:
 - (i) affiliates who are venture capital investors;
 - (ii) affiliates who are affiliates merely because one of them is controlled by one or more persons and the other by one or more persons so that both the eligible business and the other corporation are controlled by one or more members of an associated group of persons, and
 - (b) the following associates are prescribed associates:
 - (i) a partner of the eligible business if the partner controls the eligible business;
 - (ii) a participant in a joint venture with the eligible business if the participant controls the eligible business.

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- (3) The total assets referred to in paragraph (d) of the definition of “eligible business” in section 1 (1) of the Act must be calculated in accordance with generally accepted accounting principles, on a consolidated or combined basis if applicable.
- (4) For purposes of paragraph (e) of the definition of “eligible business” in section 1 (1) of the Act, the following are ineligible business activities:
- (a) primary resource exploration or extraction;
 - (b) financial services such as providing loans, selling insurance or real estate or trading in securities;
 - (c) property management or the rental or leasing of land or improvements;
 - (d) the development of or improvement to land;
 - (e) agricultural activities other than non-traditional agricultural activities such as
 - (i) game farming,
 - (ii) specialized small crops, livestock and poultry production, or
 - (iii) high technology enterprises such as greenhouse or hydroponic crop production, plant propagation, animal genetics or production of breeding stock;
 - (f) retail services.
- (5) For purposes of paragraph (e) of the definition of “eligible business” in section 1 (1) of the Act, an eligible business is substantially engaged in ineligible activities if

$$\frac{\text{Activity Assets} + \text{Activity Expenses}}{\text{Total Assets} + \text{Total Expenses}} > 0.5$$

where, for purposes of this subsection,

Activity Assets	=	the value of assets of the eligible business used in the ineligible activities,
Total Assets	=	the total value of all assets of the eligible business,
Activity Expenses	=	all expenses incurred by the eligible business during the calculation period with respect to the ineligible activities of the eligible business,
Total Expenses	=	the total of all expenses incurred by the eligible business during the calculation period with respect to all activities of the eligible business,

and the value of the assets and expenses is determined in accordance with generally accepted accounting principles.

- (6) For the purposes of paragraph (f) of the definition of “eligible business” in section 1 (1) of the Act, a business is an eligible business if it meets the following criteria:

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- (a) the eligible business has a permanent establishment as determined under the *Income Tax Act* (Canada) located in British Columbia;
- (b) not more than 20% of the assets of the eligible business are located outside of British Columbia.

Eligible securities

- 3** (1) In subsection (3) (b) of this section, “**security**” means any pledge, mortgage, security interest, charge, assignment, guarantee or indemnity granted to provide collateral assurance of payment of the debt.
- (2) For the purposes of paragraph (b) (i) of the definition of “eligible security” in section 1 (1) of the Act, the following creditors are prescribed as creditors to which the employee venture capital corporation need not be subordinate:
- (a) a shareholder of the issuer of the debt security or any person related to any such shareholder;
 - (b) a partner of the issuer of the debt security or any person related to any such partner,
 - (c) an affiliate of the issuer of the debt security or any person related to any such affiliate.
- (3) For the purposes of paragraph (b) (ii) of the definition of “eligible security” in section 1 (1) of the Act, a debt security is prescribed to be substantially at risk if the debt security
- (a) is not secured in any way, or
 - (b) is secured by security which covers less than 50% of the amount of the debt, and does not prevent the issuer from incurring other debts.

Prescribed trusts

- 4** For the purposes of paragraph (d) of the definition of “trust” in section 1 (1) of the Act, the following trust is prescribed as a trust within that definition:
- (a) if an employee venture capital corporation holds trust units, the trust issuing the trust units.

Prescribed trust dispositions

- 5** For the purposes of paragraph (d) of the definition of “trust disposition” in section 1 (1) of the Act, the following circumstances are prescribed as trust dispositions within that definition:
- (a) from one trust to another trust if the annuitant of the trust receiving the share is the spouse of the annuitant of the trust disposing of the share.

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Calculation of wages and salaries

- 6** (1) The percentage of wages and salaries that are paid to employees of a corporation for the purposes of section 3 (b) of the Act must be calculated in accordance with the following formula:

$$\text{Percentage of wages and salaries} = \frac{\text{Wages (B.C.)}}{\text{Total Wages}} \times 100$$

where

Wages (B.C.) = the total remuneration paid, payable or to be paid in respect of the calculation period to employees of the corporation who regularly reported to work during the calculation period at operations located in British Columbia, and

Total Wages = the total remuneration that was paid, payable or to be paid in respect of the calculation period to all employees of the corporation during the calculation period.

- (2) For the purposes of subsection (1), “**calculation period**” means
- (a) if, at the date of the calculation, a corporation has been in business for a period of less than 12 consecutive months, the first full calendar year or full fiscal year of the corporation, chosen by the corporation for the purposes of this section, following the date the calculation is made, or
 - (b) if, at the date of the calculation, a corporation has been in business for a period of 12 or more consecutive months, the immediately preceding calendar year or fiscal year of the corporation chosen by the corporation for the purposes of this section.

Calculation of total assets

- 7** The total assets referred to in section 3 (c) of the Act must be calculated in accordance with generally accepted accounting principles, on a consolidated or combined basis if applicable.

Payment for shares

- 8** (1) For the purposes of sections 4 (1) (d) (iii) and 10 (1) (e) (iii) of the Act, shares are deemed to be paid for in cash if the shares are paid for by conversion of a cash payment option under a profit sharing plan.
- (2) For the purposes of section 4 (1) (d) (iii) of the Act, “fully paid for in cash” in a case in which the corporation or an affiliate or predecessor of the corporation loans money for the purchase of the shares, includes the amount paid for the shares only when the loan is fully repaid or discharged.

Share rights and restrictions

- 9** (1) For the purposes of sections 4 (1) (d) (v) and 10 (1) (e) (v) of the Act, rights and restrictions are prohibited under this regulation if they are attached to the share or rights and restrictions contained in or forming part of an agreement, commitment or understanding in respect of the share and
- (a) create a debt between the holder or beneficial owner of the share and any other person,
 - (b) will entitle the holder or beneficial owner of the share to reduce the impact of any loss the holder or beneficial owner will sustain in holding or disposing of the share, or
 - (c) create materially different rights or restrictions among series of the same class of shares.
- (2) Despite subsection (1), prohibited rights and restrictions do not include rights and restrictions that become operative on the death, permanent disability, bankruptcy or involuntary loss of employment of a shareholder of the corporation.

Qualified valuator and life of a plan

- 10** (1) For the purposes of sections 4 (1) (f) (i) and 10 (1) (g) (i) of the Act, “**qualified person**” means a member in good standing of the Canadian Institute of Chartered Business Valuators.
- (2) For the purposes of section 4 (1) (f) of the Act, “**life of the plan**” means until the date the administrator, under section 4 (2) of the Act, specifies for termination of the plan.

Limits on share transactions

- 11** For the purposes of sections 4 (1) (j) and 10 (1) (k) of the Act, a reasonable test of ability to pay may prohibit share transactions that would result in redemption of the shares by the corporation if
- (a) the redemption will create a working capital deficiency,
 - (b) the amount redeemed will exceed the lesser of 20% of the corporation’s retained earnings or 50% of the corporation’s net earnings after taxes for the preceding year, or
 - (c) the redemption will cause the corporation to be in default of its financial obligations under the terms of an arm’s length loan agreement made in good faith.

Additional criteria for corporation eligibility

- 12** The following additional conditions apply for the purposes of section 9 of the Act:
- (a) if the corporation’s constitution provides for the election of a majority or more of the corporation’s directors by the corporation’s shareholders, the articles of the corporation must also provide that no transfer of shares may be completed that would result in shares of the corporation carrying 50% or

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more of the outstanding voting rights for the election of directors being owned directly or indirectly by persons other than eligible investors and persons who were eligible investors at the time when they acquired their shares of the corporation;

- (b) if the corporation has a restricted constitution, the articles of the corporation must provide that fees or remuneration of any kind to any shareholder, director or officer of the corporation, or to any affiliate or associate of those persons, are prohibited except as permitted by special resolution made at least annually;
- (c) Repealed. [B.C. Reg. 142/2002, s. 1.]
- (d) if the corporation does not have a restricted constitution, the constitution must provide that if the date on which any share may be redeemed without repayment of tax credits falls within the second 30 days of a calendar year, that share may be redeemed on or within 30 days before that date.

[am. B.C. Regs. 142/2002, s. 1; 283/2003.]

Further conditions for plan

- 13** (1) For the purposes of section 10 (1) (o) of the Act, an employee venture capital plan must provide that the shares to be acquired under the plan will
- (a) immediately following their acquisition, be registered in the name of
 - (i) the eligible investor who purchases them, or
 - (ii) a trustee, if the shares are to be held by a trust for the benefit of the purchaser or the purchaser's spouse, and
 - (b) despite the *Business Corporations Act*, be held for the period set out in the plan, which must not be less than 5 years from the date of the acquisition, in the custody of an authorized depository under such terms and conditions as are approved by the administrator.
- (2) It is a requirement for the purposes of sections 4 (1) (m) and 10 (1) (o) of the Act that the price set for the shares at the time of acquisition not exceed the value of those shares established under section 4 (1) (f) or 10 (1) (g) of the Act at that time.

[am. B.C. Reg. 68/2021, s. (a).]

Acquisition of eligible investment and commission of agent or broker

- 14** The following circumstances are prescribed as circumstances in which eligible securities of an eligible business are an acquisition that meets the requirements of section 15 (1) (a) (ii) of the Act:
- (a) the net proceeds of the sale of the eligible securities of the eligible business are paid directly or indirectly to the eligible business for its use, and the aggregate commission, fees or spread received or receivable by the agent or broker does not exceed 10% of the gross proceeds of the sale of the eligible securities.

Additional permitted investments

15 The following additional investments apply for the purposes of section 22 (1) of the Act:

- (a) debt obligations guaranteed by the government or the government of Canada;
- (b) debt obligations issued or guaranteed by corporations carrying on active business in British Columbia rated the equivalent of A-1, R-1 or higher by a recognized bond rating agency;
- (c) securities
 - (i) described in section 15 of the *Trustee Act* that are issued by British Columbian or Canadian issuers,
 - (ii) listed and traded on the Toronto Stock Exchange (or its successor exchange or trading system),
 - (iii) of any investment unit trust or mutual fund corporation which holds a diversified investment portfolio of securities that are issued by British Columbian or Canadian issuers, or
 - (iv) representing pools of any of the foregoing securitiesif, at the date of the investment, the money invested in those securities is not required under the Act to ever be invested in eligible investments;
- (d) investments in community investment loan funds administered by Community Futures Development Corporations in British Columbia on terms acceptable to the administrator.

[am. B.C. Regs. 444/99; 50/2000.]

Annual expense limits

- 16** (1) An employee venture capital corporation may incur annual expenses, other than expenses paid for out of retained earnings, if the administrator is satisfied that
- (a) the expenses are reasonable, and
 - (b) in the case of an employee venture capital corporation that has a restricted constitution, expenses paid to a person who controls directly or indirectly, or who belongs to a group of persons that controls directly or indirectly, the employee venture capital corporation have been specifically approved by special resolution in advance of payment and are made to a person whose business it is to provide the services or things for which the expenses were incurred.
- (2) For the purposes of subsection (1), retained earnings and expenses must be determined in accordance with generally accepted accounting principles.

17 Repealed. [B.C. Reg. 422/99, s. (b).]

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Cost sharing

- 18** (1) The prescribed maximum amount under section 28 (2) of the Act is \$2 500 during any calendar year.
- (2) To be eligible for reimbursement under section 28 (2) of the Act costs incurred must
- (a) be paid with respect to review or evaluation of a proposed or existing plan under the Act to a person who
 - (i) is a member of a self governing professional association, or
 - (ii) is a person approved by the administrator, or
 - (b) be paid to the government or an agent of the government for processing applications or the establishment of an authorized depository referred to in section 4 (1) (d) (iv) of the Act or section 13 (1) (b) of this regulation or of an investment protection account under section 23 of the Act.
- [am. B.C. Reg. 113/2003, s. 1.]

Annual maximum tax credit

- 19** (1) The annual maximum employee investment tax credit for the calendar year 2003 and each subsequent calendar year is \$17 million, allocated as follows:
- (a) \$1 million among all corporations with
 - (i) employee share ownership plans registered under section 2 of the Act, or
 - (ii) restricted constitutions and employee venture capital plans registered under section 8 of the Act;
 - (b) \$8.25 million among all corporations
 - (i) that do not have restricted constitutions,
 - (ii) each of which has reported total consolidated assets of at least \$200 million in value, and
 - (iii) that are registered under section 8 of the Act;
 - (c) \$7.75 million among all corporations
 - (i) that do not have restricted constitutions,
 - (ii) each of which has reported total consolidated assets of less than \$200 million in value, and
 - (iii) that are registered under section 8 of the Act.
- (2) The administrator may reallocate part of an amount allocated under paragraph (a), (b) or (c) of subsection (1) for a calendar year to or among one or more corporations that meet the criteria under any of those paragraphs in any of the following circumstances:
- (a) if the registration of a corporation qualified under that paragraph, or a plan of that corporation, is suspended or revoked;

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- (b) if a corporation qualified under that paragraph reports that it is unable to utilize the amount of the equity capital approved for it under section 2 (4), 5 (1), 8 (4) or 14 (1) of the Act;
- (c) if, due to the amount of the equity capital approved under section 2 (4), 5 (1), 8 (4) or 14 (1) of the Act, corporations qualified under that paragraph will be unable to utilize the full amount of the tax credit allocated among them under that paragraph.

[en. B.C. Reg. 142/2002, s. 2; am. B.C. Reg. 113/2003, s. 2.]

Repayment of tax credit

20 If a person to whom a tax credit has been allowed disposes of the beneficial interest in shares referred to in section 31 (2) of the Act for a total consideration that is less than that for which the shares were issued, the amount payable to the Minister of Finance under section 31 (2) of the Act is the amount equal to

- (a) in the case of shares issued under an employee share ownership plan, 20%, and
- (b) in the case of shares issued under an employee venture capital plan, 15% of the greater of
 - (c) the consideration received for the disposition of the shares, and
 - (d) an amount determined by the administrator that is the sum of
 - (i) an amount the administrator considers to be the fair market value of the shares at the time that they were disposed of, and
 - (ii) any additional amount by which the administrator considers the fair market value of the shares has been reduced in order to avoid making a payment under section 31 (2) of the Act.

Method for calculating number of employees

21 For the purpose of section 28 (1) of the Act, the number of employees of a corporation is to be calculated, at the option of the corporation, in accordance with either of the following formulas:

$$(a) \text{ Number of Employees} = \frac{\text{Total Hours}}{40 \times w}$$

where

Total Hours = the total hours worked by all employees each of whom worked for at least 20 hours (counting all time worked by each employee whether for the corporation, any of its affiliates or both) during any week of the calculation period, and

w = the number of weeks in the calculation period; or

$$(b) \text{ Number of Employees} = \frac{\text{Employee Costs} \times 52}{40 \times w}$$

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where

Employee = all amounts paid or payable by the corporation to or on behalf of
Costs employees for work performed or services provided by them
during the calculation period, and

w = the number of weeks in the calculation period.

Annual return

22 The annual return referred to in section 33 (1) of the Act must contain the following information for the period covered by the annual return:

- (a) total salaries and wages paid to the corporation's employees;
- (b) total assets of the corporation and its affiliates;
- (c) amount raised by the corporation through employee share ownership arrangements during the past 2 years;
- (d) if the corporation declined to complete a redemption or repurchase request under its plan, the particulars of the request and the reasons for declining to complete it;
- (e) a copy of any amendments to the corporation's constitution;
- (f) a copy of the corporation's financial statements for its most recent fiscal period;
- (g) such other information as may be required by the form of annual return approved by the administrator.

Application to Supreme Court

23 An application for an order under section 37 (3) of the Act must be made in accordance with the Supreme Court Civil Rules.

[am. B.C. Reg. 148/2010.]

Prescribed information

24 For the purposes of section 29 (3) (d) of the Act, the following information is prescribed:

- (a) the total amount of equity capital approved to be raised under the plan, and
- (b) the total amount of equity capital that, to the knowledge of the administrator, has been raised under the plan.

PART 2 – INVESTMENT PACING FOR CORPORATIONS THAT DO NOT HAVE A RESTRICTED CONSTITUTION

Eligible investments

25 An employee venture capital corporation that does not have a restricted constitution must invest a percentage of equity capital it has raised during the calendar year in accordance with the following Schedule:

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- (a) at least 20% by the end of the next calendar year following that year;
- (b) at least 40% by the end of the 2nd calendar year following that year;
- (c) at least 60% by the end of the 3rd calendar year following that year;
- (d) at least 80% by the end of the 4th calendar year following that year.

[en. B.C. Reg. 207/2003, s. 1 (b).]

Report to the administrator

26 On a date no later than 45 days after each calendar year, an employee venture capital corporation that does not have a restricted constitution must provide the administrator with a report containing at least the following:

- (a) the aggregate amount of equity capital received by the corporation on the issue of shares to eligible investors that are outstanding at the end of the applicable calendar year, with subtotals clearly indicating
 - (i) the equity capital received from eligible investors who have disposed of shares and subsequently have reinvested within the same calendar year and of this the equity capital received for which tax credits will be claimed in that calendar year,
 - (ii) any other equity capital received from eligible investors and of this the equity capital received for which tax credits will be claimed in that calendar year, and
 - (iii) any other equity capital received and any portion thereof for which tax credits will be claimed in that calendar year;
- (b) the aggregate amount of losses of the corporation that are realized on its eligible investments before the end of the applicable calendar year;
- (c) the aggregate amount of unrestricted gains of the corporation realized on its eligible investments before the end of the applicable calendar year;
- (d) the total of all amounts that are invested in eligible investments within the boundary of the Metro Vancouver Regional District or within the boundary of the Capital Regional District;
- (e) the total of all amounts that are invested in eligible investments outside the boundary of the Metro Vancouver Regional District and outside the boundary of the Capital Regional District.

[en. B.C. Reg. 207/2003, s. 1 (b); am. B.C. Reg. 216/2019, s. 7.]