

Response to the Report on the Review of the 2013-2014 and 2014-2015 Annual Reports and 2015-2016 Corporate and Business Plans of the Nunavut Development Corporation and Nunavut Business Credit Corporation
Standing Committee on Oversight of Government Operations and Public Accounts

Recommendation #1:

The standing committee recommends that the Government of Nunavut, in its response to this report, clarify, in detail, the methodology by which the Nunavut Development Corporation determines the number of jobs that are created and/or sustained by investments made in private entities through the corporation's Venture Investment Fund.

Responses to Recommendation #1:

Nunavut Development Corporation has applied a consistent methodology for several years in determining the number of jobs created and/or sustained. This ensures objectivity and comparability year after year of this performance measure.

Nunavut Development Corporation divides the investee's reported Nunavut payroll by the Corporation's job cost multiplier of \$37,977 to determine the jobs created and/or sustained. The job cost multiplier of \$37,997 is set out under Section 2 (2) of the Regulations under the *Nunavut Development Corporation Act*.

The standing committee further recommends that the Government of Nunavut, in its response to this report, formally define what constitutes a "small community" within the meaning of section 3 of the *Nunavut Development Corporation Act*.

The Nunavut Development Corporation has set out the definition of a small community under Section III of its Investment Policies and Guidelines (see below). The Investment Policies and Guidelines have been approved by the board of directors.

Section III (C) 3 of the NDC's Investment Policies and Guidelines reads as follows:

Emphasis on Nunavut's Smaller Communities

In assessing and making investments from the Venture Investment Fund, the Corporation shall emphasize and give preference to investments that benefit Nunavut's smaller communities (i.e. those communities whose populations is less than 1,000 as measured by the Nunavut Bureau of Statistics).

The standing committee further recommends that the Government of Nunavut, in its response to this report, formally define what constitutes a "sustainable level of profitability" within the meaning of the Nunavut Development Corporation's current investment and divestment policies and/or guidelines.

Nunavut Development Corporation operates in compliance with its Act and, accordingly, only makes investments from its Venture Investment Fund in those business enterprises that can demonstrate a positive return on investment (ROI) within three years of placing the investment. ROI is a standard ratio

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used to support business investment decisions and is specifically stated in Section 21(4) under the Corporation's Act. Nunavut Development Corporation relies on the ROI calculation as an indicator of sustainable profitability.

Operating subsidies from the Corporation's Subsidy Fund may also be given to subsidiary companies to offset operating losses but are restricted to \$37,997 per job created or sustained directly or indirectly as a result of the business. Any additional subsidy beyond this prescribed threshold must first be approved by the Financial Management Board. These provisions are explicitly included in Section 16 (4) of the Act and Section 2 (2) of the Regulations.

Section 21 (4) of the Act states:

Rate of Return

The Corporation shall not invest in a business enterprise from the Venture Investment Fund unless the rate of return expected within three years from the date of investment is positive

Section 16 (4) of the Act states:

Amount of subsidy from the Subsidy Fund

The Corporation may for each job directly or indirectly created in a project or subsidiary, pay from the Subsidy Fund to a subsidiary or for the benefit of a project, a subsidy for operating costs each fiscal year (a) in an amount not exceeding the prescribed maximum for the project or subsidiary: and (b) in an amount greater than the prescribed maximum for the project or subsidiary with the approval of the Financial Management Board.

Section 2 (2) of the Regulations states:

Maximum Amounts

The maximum amount the Corporation may, for each job directly or indirectly created in a project or subsidiary, pay from the Subsidy Fund to a subsidiary or for the benefit of a project, as a subsidy for operating costs each fiscal year under paragraph 16 (4)(a) of the Act is \$37,997

The standing committee further recommends that the Government of Nunavut, in its response to this report, clarify, in detail, the Nunavut Development Corporation's position with respect to providing equity investments in private entities that are intended to enhance their competitive position vis-à-vis other Nunavut-based entities with respect to government contracting and procurement in such sectors as travel, hospitality, fuel delivery and construction.

As per the Corporation's Investment Policies and Guidelines, the Board must take into consideration the impact on the existing market when making decisions regarding investments from the Venture Investment Fund. As per Section III (D) 6, the board must explicitly consider the following directive – *The manner in which the proposed investment may disrupt or otherwise affect the market.*

The standing committee further recommends that the Government of Nunavut, in its response to this report, provide a detailed update on the status of the Nunavut Business Credit Corporation's work to

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“develop quantifiable performance measures and annual reporting practices to enable an objective assessment of the corporation’s success in fulfilling its statutory mandate to stimulate economic development and employment in Nunavut.”

The Department of Economic Development and Transportation, together with Nunavut Business Credit Corporation, will undertake further work in 2016-2017 to develop meaningful performance measures that can be consistently applied and used to assess the success of its funding programs. Potential measures may include jobs created, goods and services purchased and/or goods and services provided by a business that has received funding. While seemingly straightforward, reported measures may be subject to error when aggregated due to double-counting given multiple funders, accuracy of self-reported figures and handling of seasonal or part time jobs. To ensure consistency and year over year comparability, there needs to be clear guidance developed to lessen the potential of error and subjectivity.

The standing committee further recommends that the Government of Nunavut, in its response to this report, clarify the extent to which the Nunavut Business Credit Corporation’s formally-defined role as a “blend of being a lender of last resort and a developmental agency for Nunavut businesses” is consistent with its statutory mandate and is complementary to the role of the Nunavut Development Corporation, which makes equity investments in private entities.

Nunavut Business Credit Corporation continues to re-brand itself from a “lender of last resort” consistent with its origin and intent to a “lender of northern opportunity” to reflect today’s environment. Prior to Division, the business credit corporation of the Northwest Territories was established to provide financing to those business enterprises that could not obtain funding from commercial lending institutions given a typically higher perceived risk. Today, business enterprises can obtain funding from other northern-focused lenders such as Atuqtuarvik Corporation and the First Nations Bank who may work jointly with Nunavut Business Credit Corporation in funding a business opportunity. Consistent with this shift, the Corporation has adopted a new logo which more accurately reflects its focus on building opportunities for Nunavummiut. Consistent with this new focus, the Corporation seeks to update its legislation as the Act remains essentially unchanged since its adoption from the Northwest Territories. Of particular note is its desire to increase the lending limit threshold to better accommodate the financing needs of Nunavut’s growing private sector.

Standing Committee Recommendation #2:

The standing committee recommends that the Minister responsible for the Nunavut Development Corporation and the Nunavut Business Credit Corporation table in the Legislative Assembly, at the earliest opportunity, all approved governance and operating policies of the boards of directors of the Nunavut Development Corporation and the Nunavut Business Credit Corporation.

Responses to Recommendation #2:

The Government is committed to tabling Nunavut Development Corporation and Nunavut Business Credit Corporation's governance and operating policies as per standing committee's Recommendation. With the full cooperation of both Nunavut Development Corporation and Nunavut Business Credit Corporation, a reporting package has been prepared and will be tabled in the Legislative Assembly at the earliest opportunity.

The standing committee further recommends that the Government of Nunavut's response to this report clarify, in detail, the respective authorities of the chairs and members of the board of directors of the Nunavut Development Corporation and the Nunavut Business Credit Corporation, the Minister responsible for the Nunavut Development Corporation and the Nunavut Business Credit Corporation, the Presidents and Chief Executive Officers of the Nunavut Development Corporation and the Nunavut Business Credit Corporation, the Financial Management Board, the Executive Council and the Public Agencies Council with respect to the:

Final approval of the annual corporate/business plans of the Nunavut Development Corporation and Nunavut Business Credit Corporation;

Approvals of the corporate/business plans are in accordance with the respective legislation for both corporations. Each board of directors then approves the annual corporate/business plans at its board meeting and the approval is recorded in the Minutes for each corporation. The corporate/business plans are then sent to the Minister Responsible for approval. The Minister Responsible for both corporations is the Minister of Economic Development and Transportation and the department serves to coordinate this process. The Minister has the authority to approve the corporate/business plan as set out under Section 91 of the *Financial Administration Act*.

Once approved, the core funding contribution for each corporation is included in the Department of Economic Development and Transportation's Business Plan.

Section 91 of the *Financial Administration Act* states:

(1) Every territorial corporation shall annually submit a corporate plan for the approval of the appropriate Minister.

Section 25 of the *Nunavut Development Act* states:

(1) In addition to the requirements set out in the *Financial Administration Act*, the Corporation shall:

- (a) annually submit a corporate plan, and operating budget, and a capital budget, respectively described in sections 91 to 93 of the *Financial Administration Act*, for the approval of the Financial Management Board; and
- (b) furnish the Minister with any information or records that the Minister may require in the exercise of her powers and the performance of his or her duties under the Act.

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Final approval of the annual reports of the Nunavut Development Corporation and the Nunavut Business Credit Corporation;

The board of directors for each corporation provides final approval of the annual report prepared by the respective corporation as per section 96 of the *Financial Administration Act*.

The respective board of directors for each corporation provides the formal approval of the annual reports. The Auditor General of Canada must also review and approve the respective annual reports for release prior to its submission to the Minister. Upon acceptance by the Minister, s/he then submits the respective annual reports to Executive Council for its approval for tabling.

Section 96 of the *Financial Administration Act* states:

“every public agency for each financial year, prepare and submit to the appropriate Minister an annual report of the public agency that:

- (a) states the activities of the public agency
- (b) includes the financial statements of the public agency
- (c) includes the report of the auditor; and
- (d) includes any other information that this Act, any other Act or the appropriate Minister may require.

Final approval of the annual Ministerial *Letters of Expectation* to the Chairs of the Boards of Directors of the Nunavut Development Corporation and the Nunavut Business Credit Corporation; and

Letters of Expectation are issued by the Minister Responsible and addressed to the respective chair of Nunavut Business Credit Corporation and the Nunavut Development Corporation respectively. The Deputy Ministers of Economic Development and Transportation and Finance are copied on the Letters of Expectation sent to both corporations. The respective chairs must respond to the Minister’s Letter of Expectation within 30 days with copies sent to the Deputy Ministers noted. The Letters of Expectations and the responses are shared with the respective board of directors. As part of the annual audit process, the Auditor General also reviews any and all correspondence from the Minister to the corporations and reviews all Minutes.

Final approval of the annual operations and maintenance budgets of the Nunavut Development Corporation and the Nunavut Business Credit Corporation.

Approval of each corporation’s annual operation and maintenance budget is in accordance with the process noted above for the corporate/business plan approval process.

The standing committee further recommends that the Government of Nunavut’s response to this report clarify, in detail, its position concerning the recommendation made by the board of directors of the Nunavut Business Credit Corporation regarding amendments to section 37 of the *Nunavut Business Credit Corporation Act*.

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While there is not an approval at this time to initiate a comprehensive review of the *Nunavut Business Credit Corporation Act* in view of the extensive activities to update other territorial legislation as a whole, the Government supports amendment of the loan limit threshold under section 37 and other matters of an administrative matter which would allow this effort to proceed on an efficient timeframe. A comprehensive review of the *Nunavut Business Credit Corporation Act* will be considered in the future as well as any requirement for a review of the *Nunavut Development Corporation Act*.

The standing committee further recommends that the Government of Nunavut's response to this report clarify, in detail, the extent to which section 20 of the *Nunavut Development Corporation Act* is being currently followed by the corporation's board of directors.

Section 20 of the *Nunavut Development Corporation Act* mandates the establishment of the Investment Committee, Audit Committee and the Personnel Committee. At the outset, the corporation's board of directors chose to establish an Executive Committee to undertake the statutory functions established in the Act for each of the identified committees. The Executive Committee formally meets three times a year via teleconference and confers on issues regularly as required. Key functions include approving new investments for recommendation to the board of directors as a whole, meeting with the auditors and approving audit committee reports, making recommendations to the Minister on matters such as executive compensation. The corporation is audited by the Auditor General of Canada for compliance with its governing authorities such as the *Nunavut Development Corporation Act* and the *Financial Administration Act*. Should it be determined that the corporation is not in compliance with this (or any other significant provision under the Act), the Auditor's Report would have a qualification which is reported publicly. This has not been the case for Nunavut Corporation Development.

The standing committee further recommends that the boards of directors of the Nunavut Development Corporation and the Nunavut Business Credit Corporation formally submit a comprehensive set of specific recommendations for specific amendments to the *Nunavut Development Corporation Act* and the *Nunavut Business Credit Corporation Act* to the Minister responsible for both territorial corporations for consideration.

There is no approval at this time to initiate a comprehensive review of the *Nunavut Business Credit Corporation Act* given the extensive activities to update other territorial legislation as a whole. However the Government supports amendment of the loan limit threshold under section 37 and other matters of an administrative matter which could be achieved within this mandate and without extensive commitment of resources. A comprehensive review of the *Nunavut Business Credit Corporation Act* will be considered in the future as well as any requirement for a review of the *Nunavut Development Corporation Act*.

The standing committee further recommends that these recommendations be submitted no later than September 1, 2016, and that they be subsequently tabled in the Legislative Assembly during the fall 2016 sitting of the House.

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The Government supports the revision to section 37 as mentioned above and minor revisions to the *Nunavut Business Credit Corporation Act* and, as necessary, to the *Nunavut Development Corporation Act*. The Government commits to working with the Nunavut Business Credit Corporation and Nunavut Development Corporation to bring forward the suggested amendments on the timeframe as noted.

The standing committee further recommends that the boards of directors of the Nunavut Development Corporation and the Nunavut Business Credit Corporation formally consider the advisability of amalgamating the two corporations into a single entity.

While the Government supports efforts to consider the best approaches toward delivering economic development programming for the Territory as whole, such evaluation of amalgamation of the two corporations must take into full consideration the current environment vis-à-vis the circumstances when the two earlier reports were produced and how the two corporations are functioning today with full staff complements and experienced management complemented by engaged boards of directors. Any such review should not be undertaken in isolation without an opportunity to comprehensively review the two corporations' Acts in conjunction with an assessment of economic development programming for the Territory and how and which entities are best positioned and needed to achieve the objectives of fostering employment and developing economic opportunities for Nunavummiut. Further, this should not proceed until the results of the Operational Audit initiative are complete and results tabled.

The standing committee further recommends that the boards' recommendations concerning amalgamation be submitted to the Minister responsible for both territorial corporations no later than September 1, 2016, and that they be subsequently tabled in the Legislative Assembly during the fall 2016 sitting of the House.

As noted above, the Government contends that this assessment should be undertaken as part of a larger effort in reviewing how economic development programming is delivered across the territory and should include a comprehensive review of the corporations' Acts taking into consideration significant changes since the two reports on the issue of amalgamation were produced.

The standing committee further recommends that the Minister responsible for the Nunavut Development Corporation and the Nunavut Business Credit Corporation seek opportunities to increase the number of individuals who serve on the boards of directors of both the Nunavut Development Corporation and the Nunavut Business Credit Corporation.

The Government contends that, while there may be some perceived benefits, the experience for those who already serve on both boards shows that it is logistically difficult to meet the board obligations for the two corporations given the same reporting cycle and need for board participation on the same timeframe.

Individuals who sit on the board of directors of either corporation are carefully selected for their business acumen and experience within the territory as well as knowledge at the regional and

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community level. Such individuals are highly sought for appointment to other boards and often encounter scheduling conflicts. Those individuals who serve on both boards are challenged with preparation and participation on very similar schedules and often in different locations and time zones for the two corporations. Experience has shown that those who co-serve on both boards must choose between the two out of necessity. This may adversely impact the respective corporation's ability to secure necessary membership required for a quorum and therefore the ability to advance the corporation's activities when board direction and approvals are necessary.

Standing Committee Recommendation #3:

The standing committee recommends that the Government of Nunavut, in the interest of the greatest possible certainty and clarity, bring forward an amendment to the *Nunavut Business Credit Corporation Act* during the winter 2016 sitting of the Legislative Assembly that is explicitly modelled on the provisions that are contained in section 31 of the *Northwest Territories Business Development and Investment Corporation Act*.

Responses to Recommendation #3:

Apart from minor revisions and an amendment to section 37 of the *Nunavut Business Credit Corporation Act* as noted earlier, the Government contends that this assessment should be undertaken as part of a larger effort in reviewing how economic development programming is delivered across the territory and should include a comprehensive review of the corporations' Acts. This matter may be considered at that time with a cross-jurisdictional review.

The standing committee notes that this would allow the corporation's next annual report to the Legislative Assembly for the 2015-2016 fiscal year to fully disclose the identities of recipients of loans and other financial assistance from the corporation, as well as the amounts of financial assistance provided to recipients.

While the Government acknowledges its responsibility to be accountable for public monies, it remains concerned about the implications of releasing such information which may be considered sensitive given the Territory's relatively small private sector and without advance notice to recipients, being corporate and/or individuals. Although standing committee queried the Information and Privacy Commissioner during her appearance, the Government wishes to seek a formal review and ruling from the Privacy Commissioner and obtain further legal advice to protect from potential legal implications if any.

There may be the ability to effect a new disclosure policy going forward for new loan applicants who consent to the public release of loan details as part of the conditions under which financing is received.

The standing committee further recommends that the Nunavut Business Credit Corporation, in light of the observations made in this report concerning the disclosure requirements that are presently contained in the corporation's application and consent forms, clarify its position regarding its current practices in this area.

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The Government's position is noted above. With respect to the consent associated with the application process, this enables the corporation to share information with other possible funders concerning financing requirements related to the same business enterprise. This is not intended as consent for public disclosure.

The standing committee further recommends that future annual reports on procurement, contracting and leasing activities which are prepared by the Nunavut Development Corporation and the Nunavut Business Credit Corporation explicitly account for actual expenditures incurred in these areas.

The Government agrees to bring this information forward on a timely basis.

The standing committee further recommends that future annual reports on procurement, contracting and leasing activities which are prepared by the Nunavut Development Corporation and the Nunavut Business Credit Corporation be tabled in the Legislative Assembly in a timely manner by the Minister responsible for both territorial corporations.

The Government agrees to bring this information forward on a timely basis.

The standing committee further recommends that the Government of Nunavut, in its response to this report, clarify, in detail, the extent to which the Nunavut Development Corporation's current equity investments in private ventures include elements of ownership, direction and control of the ventures.

The Government contends that Nunavut Development Corporation only possesses an element of control in Pangnirtung Fisheries through its ownership of a 24.5% ownership. Other shareholdings are in the form of preferred shares which have no conversion rights and no voting shares are held.

The standing committee further recommends that the Nunavut Development Corporation's future annual reports more clearly account for the extent to which its equity investments in private ventures include elements of ownership, direction and control of the ventures.

The Government will direct Nunavut Development Corporation to provide this disclosure in its annual reports.

The standing committee further recommends that the Nunavut Business Credit Corporation's future annual reports explicitly account, in detail, for actions taken during the fiscal year under the provisions of sections 30 and 36 of the *Nunavut Business Credit Corporation Act*.

The Government will review this matter in conjunction with the standing committee's Recommendation for disclosure of loan recipient information.

The standing committee further recommends that the Nunavut Development Corporation's future annual reports explicitly account, in detail, for directives issued during the fiscal year under the provisions of subsection 78(1) of the *Financial Administration Act*.

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The Government will direct Nunavut Development Corporation to provide this disclosure in its annual reports.

The standing committee further recommends that the Minister responsible for the Nunavut Development Corporation table in the Legislative Assembly, at the earliest opportunity, the corporation's current *Investment Policies and Guidelines*.

The Government agrees to table Nunavut Development Corporations' *Investment Policies and Guidelines*.

The standing committee further recommends that the Minister responsible for the Nunavut Business Credit Corporation table in the Legislative Assembly, at the earliest opportunity, the corporation's current manuals concerning "credit management, administration and conduct, board orientation and accounting."

As agreed under Recommendation #2, the corporation's policies will be tabled at the earliest opportunity.

The standing committee further recommends that the Minister responsible for the Nunavut Business Credit Corporation table in the Legislative Assembly, at the earliest opportunity, the corporation's memoranda of understanding with the Baffin Business Development Centre, Kitikmeot Community Futures and the Atuqtuarvik Corporation.

The Government will bring forward any and all memoranda of understandings that have been signed and approved by the Nunavut Business Credit Corporation's board of directors.

The Nunavut Development Corporation's Board has indicated there are no memoranda of understandings in place.