



TSAWWASSEN FIRST NATION
s'cəwaθən məsteyəx^w

2009

ECONOMIC DEVELOPMENT ACT

Enacted April 3, 2009

CHIEF KIM BAIRD

TSAWWASSEN FIRST NATION

2009

ECONOMIC DEVELOPMENT ACT

Contents

- 1 Citation
- 2 Definitions

PART 1 – TSAWWASSEN FIRST NATION ECONOMIC DEVELOPMENT CORPORATION

- 3 Tsawwassen First Nation Economic Development Corporation
- 4 Purpose of the corporation
- 5 Incorporation
- 6 Shareholder
- 7 Articles of incorporation
- 8 Transparency
- 9 Joint ventures and partnerships
- 10 Borrowing and financing
- 11 Own source revenue
- 12 Transfer of certain responsibilities to the corporation
- 13 Disposition of certain revenues to Tsawwassen First Nation
- 14 Dissolution of the corporation
- 15 Board of directors
- 16 Annual presentation of the board of directors
- 17 Audit committee
- 18 Other board committees
- 19 Replacement of directors
- 20 Appointment of chief executive officer
- 21 Policy direction
- 22 Shareholder letter of expectations
- 23 Compensation of directors

PART 2 – ECONOMIC DEVELOPMENT FUND

- 24 Economic Development Fund
- 25 Contributions from the Economic Development Fund

PART 3 – INVESTOR GUARANTEES

- 26 Mediation and arbitration
- 27 Same treatment

PART 4 – DUE DILIGENCE

- 28 Due diligence

PART 5 - REGULATIONS

- 29 Regulations
- 30 Interpretation
- 31 Commencement

Tsawwassen Legislature enacts as follows:

Citation

- 1 This Act may be cited as the *Economic Development Act*.

Definitions

- 2 In this Act:

- “**articles**” has the same meaning as in the *Business Corporations Act* (British Columbia);
- “**chief administrative officer**” means the person appointed to that position under the *Government Organization Act*;
- “**chief executive officer**” means the person appointed to that position under section 20;
- “**corporation**” means the Tsawwassen First Nation Economic Development Corporation established under section 3;
- “**director**” means a director of the corporation;
- “**Executive Council**” means Executive Council of the Tsawwassen First Nation established under the *Government Organization Act*;
- “**outside director**” means an individual who is not a Tsawwassen Member;
- “**own source revenue**” means the revenue contributions of the Tsawwassen First Nation made under a fiscal financing agreement negotiated in accordance with Chapter 19 [*Fiscal Relations*] of the Tsawwassen First Nation Final Agreement;
- “**Tsawwassen business entity**” means a joint venture, partnership, business corporation or other for profit entity in which a Tsawwassen Institution or the corporation is a participant;
- “**Tsawwassen Government**” means the government of Tsawwassen First Nation as referred to in clause 2 of Chapter 16 [*Governance*] of the Tsawwassen First Nation Final Agreement;
- “**Tsawwassen Lands**” means the lands set out in Appendix C-4 of the Tsawwassen First Nation Final Agreement as Tsawwassen Lands and “Other Tsawwassen Lands” as defined in clause 18 of Chapter 4 [*Lands*] of the Tsawwassen First Nation Final Agreement;
- “**Tsawwassen Legislature**” means the Tsawwassen First Nation Legislature;
- “**Tsawwassen Member**” means a Tsawwassen individual who is enrolled as a member of Tsawwassen First Nation in accordance with Chapter 21 [*Eligibility and Enrolment*] of the Tsawwassen First Nation Final Agreement;
- “**Tsawwassen Public Institution**” means a Tsawwassen public institution as defined in the Tsawwassen First Nation Final Agreement.

PART 1 – TSAWWASSEN FIRST NATION ECONOMIC DEVELOPMENT CORPORATION

Tsawwassen First Nation Economic Development Corporation

- 3** The Tsawwassen First Nation Economic Development Corporation is established.

Purpose of the corporation

- 4** The purpose of the corporation is to transact business of a commercial nature in a responsible manner with the goal of creating long term wealth for the benefit of Tsawwassen First Nation and Tsawwassen Members.

Incorporation

- 5** The chief administrative officer must cause the Corporation to be incorporated under the *Business Corporations Act* (British Columbia).

Shareholder

- 6** Executive Council is the sole shareholder of the corporation and must hold the corporation's shares in trust for Tsawwassen Members.

Articles of incorporation

- 7** The articles of the corporation, including any amendments to those articles, must be approved by Executive Council.

Transparency

- 8**
- (1) Unless to do so would harm its commercial or financial interests or those of a third party, the corporation must communicate openly about its affairs with Executive Council, Tsawwassen First Nation and Tsawwassen Members.
 - (2) Subject to subsection (1), the corporation must make available in a timely and efficient manner to Executive Council any records that Executive Council requests.
 - (3) Within 2 months of each anniversary of the date on which the corporation was incorporated, the corporation must file an annual report, including an audited annual financial statement, with the chief administrative officer.
 - (4) The corporation must also provide a copy of the annual report to Executive Council, which must table that copy in the Tsawwassen Legislature.

Joint ventures and partnerships

- 9** Subject to section 10, the corporation may enter into joint ventures with external entities or partnerships with Tsawwassen Members, provided that
- (a) the amount of financing contributed or required at any time in the future does not exceed an appropriate threshold, as determined from time to time by Executive Council and communicated to the corporation, and
 - (b) a feasibility assessment or due diligence report for the venture has been approved by Executive Council, which must be satisfied that the assessment or report demonstrates a reasonable expectation of an adequate return on the corporation's investment.

Borrowing and financing

- 10** (1) The corporation must not borrow or otherwise obtain financing by way of loans, mortgages, securities or any other instruments in an amount exceeding
- (a) an appropriate threshold, as determined from time to time by Executive Council and communicated to the corporation, and
 - (b) an amount authorized by the Tsawwassen Legislature.
- (2) Executive Council may make advances or other contributions to the corporation, provided that these advances or other contributions are authorized by the Tsawwassen Legislature.

Own source revenue

- 11** If any revenue generated by the corporation is treated as own source revenue of Tsawwassen First Nation pursuant to a fiscal financing agreement entered into with the Government of Canada or British Columbia, the corporation must remit to the general revenue fund payments to offset the reductions in funding under that agreement.

Transfer of certain responsibilities to the corporation

- 12** (1) Executive Council may transfer responsibility for management of some or all of Tsawwassen First Nation's commercial and industrial land holdings to the corporation, subject to any applicable provincial, federal or Tsawwassen Laws.
- (2) Any Tsawwassen Lands whose management is transferred to the corporation
- (a) may not be disposed of or transferred in any manner to another party without the prior approval of Executive Council,
 - (b) continue to be owned in fee simple by Tsawwassen First Nation, and
 - (c) must not be pledged directly or indirectly as collateral to secure a loan or any other form of financing.

Disposition of certain revenues to Tsawwassen First Nation

- 13** Any proceeds derived from any Tsawwassen Lands managed by the corporation that originate from rental income, lease income or permits must be remitted to the Tsawwassen First Nation general revenue fund, provided that allowances may be made by Executive Council to offset management, development and other associated costs properly incurred by the corporation.

Dissolution of the corporation

- 14** Executive Council may dissolve the corporation at any time if Executive Council believes that the corporation is no longer serving the interests of Tsawwassen First Nation and Tsawwassen Members.

Board of directors

- 15** (1) Executive Council must appoint the members of the board of directors of the corporation to direct and manage the affairs of the corporation and ensure it is properly serving the long-term interests of Tsawwassen Members.
- (2) The board of directors of the corporation must consist of not more than 11 individuals a majority of whom must not be Tsawwassen Members.

- (3) A chair, appointed by Executive Council from among members of the board of directors who are not members of Executive Council, must preside over the board of directors.
- (4) At least 2 directors must have significant financial expertise.

Annual presentation of the board of directors

- 16** (1) The board of directors must make a regular presentation to Tsawwassen Members at the Tsawwassen First Nation Annual General Meeting, or at another meeting of Tsawwassen Members convened by the board of directors for that purpose.
- (2) The annual presentation of the board of directors must include a review of the corporation's annual plan, budget and audit.

Audit committee

- 17** (1) The board of directors must appoint an audit committee from among its members.
- (2) The audit committee must be chaired by an outside director.
- (3) At least one member of the audit committee must have significant financial expertise.

Other board committees

- 18** The board of directors may establish permanent or temporary committees or appoint such professional advisors as it considers advisable to enable the board to carry out its duties.

Replacement of directors

- 19** Executive Council may dismiss and replace one or more directors at any time if it believes that this is in the interests of the Tsawwassen First Nation and Tsawwassen Members.

Appointment of chief executive officer

- 20** Subject to the approval of Executive Council the board of directors must appoint the chief executive officer of the corporation.

Policy direction

- 21** (1) Executive Council from time to time may issue policy directives to the board of directors, provided that the directives
 - (a) are in writing,
 - (b) address general policy matters relating to the interests of Tsawwassen First Nation and Tsawwassen Members, and
 - (c) do not adversely affect the tax status or the commercial interests of the corporation.
- (2) Any policy directives issued by Executive Council to the board of directors under subsection (1) must be filed in the Tsawwassen First Nation Public Registry of Laws.

Shareholder letter of expectations

- 22 Executive Council may issue from time to time, but no less than every 3 years, a shareholder letter of expectations, providing direction respecting the corporation's mandate, strategic objectives and other matters considered to be of fundamental importance to Tsawwassen First Nation.

Compensation of directors

- 23 Compensation of directors of the board must be determined by the Executive Council.

PART 2 – ECONOMIC DEVELOPMENT FUND

Economic Development Fund

- 24 The Economic Development Fund is established as an account within the general revenue fund.

Contributions from the Economic Development Fund

- 25 Executive Council may make loans to Tsawwassen Members from the Economic Development Fund account, provided that the total amount lent in any fiscal year does not exceed the total amount approved by the Tsawwassen Legislature in the annual budget.

PART 3 – INVESTOR GUARANTEES

Mediation and arbitration

- 26 Any party to a financing, partnership or joint venture agreement with the Tsawwassen Government or a Tsawwassen business entity may refer a dispute to
- (a) commercial mediation, or
 - (b) commercial arbitration, in accordance with the *Commercial Arbitration Act* (British Columbia), whether or not there is a subsisting agreement that provides for such arbitration.

Same treatment

- 27 Other than as set out in Division 2 of the *Land Act*, a party to a financing, partnership or joint venture agreement with a Tsawwassen business entity is subject to the same treatment under Tsawwassen laws as the corporation, a Tsawwassen Public Institution or any Tsawwassen business entity.

PART 4 – DUE DILIGENCE

Due diligence

- 28 Executive Council may require that a feasibility assessment or a due diligence report be prepared and approved by Executive Council before the corporation of any other

Tsawwassen business entity may make an investment or other business commitment.

PART 5 – REGULATIONS

Regulations

- 29** (1) Executive Council may make regulations to manage and administer this Act.
- (2) Without limiting the generality of subsection (1), Executive Council may make regulations in respect of
- (a) the dividend requirements of the corporation, provided that the regulation provides that actual performance and business plans are taken into account, and
 - (b) procedures and criteria for awarding loans, grants and contributions from the Economic Development Fund.

Interpretation

- 30** The *Interpretation Act* (British Columbia) applies to this Act and the regulations, unless the context or another Tsawwassen enactment otherwise requires.

Commencement

- 31** This Act comes into force on the date of its enactment by Tsawwassen Legislature.

