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CANADA
DEPARTMENT OF REGIONAL ECONOMIC EXPANSION

AGREEMENT

between

THE GOVERNMENT OF CANADA

and

THE GOVERNMENT OF THE PROVINCE OF NEWFOUNDLAND

July 17, 1972



Newfoundland and Labrador Development Corporation Limited

MEMORANDUM OF AGREEMENT made this 17th day of July, 1972

BETWEEN: THE GOVERNMENT OF CANADA, represented by the Minister of Regional Economic Expansion (hereinafter referred to as "Canada"),

OF THE FIRST PART,

AND: THE GOVERNMENT OF THE PROVINCE OF NEWFOUNDLAND, represented herein by the Minister of Economic Development (hereinafter referred to as "the Province"),

OF THE SECOND PART.

WHEREAS Canada and the Province consider that the viability of small and medium-sized businesses in Newfoundland and Labrador can be substantially improved by the establishment of an agency which would provide to such businesses industrial intelligence, management advisory services, project information and loan and equity financing, and have agreed to incorporate a company which will be jointly controlled by Canada and the Province and will act as their agent for the provision of such services;

AND WHEREAS the Governor in Council by Order in Council P.C. 1972-10/1495 of the 4th day of July, 1972, has authorized the Minister of Regional Economic Expansion to execute this Agreement on behalf of Canada;

AND WHEREAS the Lieutenant-Governor in Council by Order in Council No. 677-72 of the 22nd day of June, 1972, has authorized the Minister of Economic Development to execute this Agreement on behalf of the Province;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT the parties hereto agree as follows:

DEFINITIONS

1. In this Agreement
 - (a) "Corporation" means the Company referred to in section 2 hereof;
 - (b) "Directors" means the Directors of the Corporation;
 - (c) "Federal Minister" means the Minister of Regional Economic Expansion of Canada, and includes anyone authorized to act on his behalf;
 - (d) "fiscal year" means the period commencing on April 1st of any year and ending on March 31st of the next following year;
 - (e) "Provincial Minister" means the Minister designated by the Government of Newfoundland, and includes anyone authorized to act on behalf of the designated Minister;
 - (f) "Ministers" means the Federal Minister and the Provincial Minister.

SUBJECT MATTER

2. The Province will, in consultation with the Federal Minister, cause to be incorporated under the Companies Act of the Province of Newfoundland a limited liability company (hereinafter referred to as "the Corporation") under the name of "Newfoundland and Labrador Development Corporation Limited" or such other name as may be available and acceptable to the Ministers, with such powers as may appear to the Ministers to be necessary or desirable to enable it to assist small and medium-sized businesses in Newfoundland and Labrador by the provision of:

- (a) industrial intelligence;
- (b) management advisory services;
- (c) project information;
- (d) loan financing for the establishment, expansion or modernization of their operations;
- (e) equity financing; and
- (f) related services and assistance.

HEAD OFFICE

3. The Head Office of the Corporation shall be at the City of St. John's, Newfoundland.

SHARE CAPITAL

4. The Corporation shall have an authorized share capital of Five Hundred Dollars, divided into 500 common shares of the par value of One Dollar each, of which the Province shall subscribe for 300 shares and Canada shall subscribe for 200 shares.
5. The ownership of all the Corporation's shares shall remain vested in Canada and the Province throughout the life of the Company, except that the parties hereto may transfer such qualifying shares to members of the Board of Directors as may be required by the Newfoundland Companies Act or the Articles of Association of the Corporation.
6. Except for any qualifying shares of Directors, the Province's shares shall be held in the name of the Province as represented by the Provincial Minister and those of Canada shall be held in the name of Canada as represented by the Federal Minister, and neither party shall transfer control of its shares to any other Minister or government agency without the prior written consent of the other party, which consent may be given by the Federal Minister on behalf of Canada or the Provincial Minister on behalf of the Province.

ARTICLES OF ASSOCIATION

7. The Articles of Association, and any amendments thereto, shall require the approval of the Ministers and shall as far as possible be framed so as to carry out the intentions of this Agreement and in particular so that Canada, notwithstanding that it will be a minority shareholder, will have joint control, with the Province, of the Corporation.

BOARD OF DIRECTORS

8. (1) The Board of Directors of the Corporation shall consist of not less than five nor more than ten Directors, who shall be jointly elected by the Ministers in their capacity as shareholders, on the basis that each Minister shall have the right to nominate and have elected that proportion, as nearly as possible, of the Board of Directors that the shares held by his Government bears to the total number of issued shares of the Corporation, but so that the Province shall always be represented by a majority of at least one Director. For the purposes of this Agreement the Directors elected pursuant to the nomination of the Provincial Minister are hereinafter referred to as the "Provincial Directors" and those elected pursuant to the nomination of the Federal Minister are hereinafter referred to as the "Federal Directors".

(2) Any remuneration of the Directors shall be subject to the approval of the Ministers.

OFFICERS

9. The officers of the Corporation shall be appointed by the Board of Directors, and their remuneration shall be recommended by the Board of Directors and approved by the Ministers in their capacity as shareholders.

LOAN CAPITAL

10. (1) Canada will provide the Corporation with funds to enable the Company to make loans to business enterprises in Newfoundland and Labrador.

(2) Such funds will be provided to the Corporation by way of advances on a loan basis, as required from time to time for the Corporation's loan operations, each of which advances will be repayable to Canada by the Corporation within a maximum period of ten years, subject to such renewal arrangements as may from time to time be agreed upon between the Federal Minister and the Corporation, with interest both before and after maturity at the time each advance is made by Canada, as determined by the Minister of Finance of Canada in respect of advances of funds provided by the Department of Finance to Crown Corporations.

(3) The total amount of advances by Canada outstanding at any time under this section, excluding accrued interest, shall not exceed the amount of \$20 million.

(4) Such funds shall be used by the Corporation to make loans for the establishment, expansion or modernization of business enterprises in Newfoundland and Labrador, provided that the Corporation considers that the business enterprise to which any loan is made is viable and could not obtain adequate financing from other sources.

(5) No loan by the Corporation shall carry interest at a rate less than the rate at that time determined by the Minister of Finance of Canada in respect of advances of funds provided by the Department of Finance to Crown Corporations plus a minimum of one per cent per annum.

11. (1) The loan funds advanced to the Corporation by Canada shall be used by the Corporation as a revolving loan fund, and the Corporation will be required to set up a separate bank account for such fund, into which shall be paid all loan advances made by Canada and, except as provided by sub-section (3), all monies received by the Corporation on account of loans made by the Corporation, and out of which shall be paid all loan advances made by the Corporation and all monies repaid by the Corporation to Canada with respect to loan advances made by Canada.

(2) Whenever in the opinion of the Ministers the amount of the Corporation's loan fund exceeds the amount actually required for such purposes, the excess amount thereof, as determined by the Ministers, shall be repaid by the Corporation to Canada and shall be applied by Canada against the Corporation's obligations in the same order as such obligations were incurred.

(3) The difference between the Crown Corporation rate and the rate to be charged by the Corporation as provided by sub-section (5) of section 10, shall be used by the Corporation as a reserve fund against bad debts, and for that purpose the Corporation shall be required to establish a separate bank account into which shall be paid all monies received by the Corporation in respect of the said difference in interest rates. When the said reserve fund has reached a level that in the opinion of the Ministers is sufficient reserve against bad debts, any surplus shall either be transferred to the loan fund referred to in sub-section (1) or repaid to Canada, as may be decided by the Ministers.

(4) Any monies administered by the Corporation pursuant to this section may be temporarily invested by the Corporation in obligations of or guaranteed by the Government of Canada.

EQUITY CAPITAL

12. (1) The Province will provide the Corporation with funds to enable the Corporation to provide equity capital to business enterprises in Newfoundland and Labrador that the Corporation considers to be viable and to have provided from their own resources as much equity capital as is reasonable in the circumstances of the business enterprise concerned.

(2) The total amount of advances by the Province outstanding at any time under this section shall not exceed the sum of \$2 million initially.

13. (1) The funds advanced to the Corporation by the Province under section 12 shall be used by the Corporation as a revolving equity financing fund, and the Corporation will be required to set up a separate bank account for such fund, into which shall be paid all advances of equity capital made by the Province and all monies received by the Corporation as proceeds from its equity investments, and out of which shall be paid all equity investments by the Corporation and all repayments to the Province of advances made by the Province for equity capital, provided however that the Corporation may temporarily invest any monies administered by it pursuant to this section in obligations of or guaranteed by the Government of Newfoundland.

(2) Whenever in the opinion of the Ministers the amount of the Corporation's equity financing fund exceeds the amount actually required for such purposes, the excess amount thereof, as determined by the Ministers, shall be repaid by the Corporation to the Province.

FINANCING BY THE CORPORATION

14. (1) The financing of business enterprises by the Corporation shall be restricted to enterprises operating in Newfoundland and Labrador, and every decision to provide such financing and the details thereof shall require the prior approval of a majority of the Board, which majority must include at least one Federal and one Provincial Director, neither of whom shall be an officer of the Corporation.

(2) The Corporation shall be prohibited from financing any project the estimated capital cost of which, excluding working capital, exceeds one million dollars.

(3) No loan by the Corporation shall exceed the amount of 300 per cent of the equity capital provided for the project and its directly related operations.

(4) The Ministers may agree to further policies and conditions, not inconsistent with this Agreement, as to the financing operations of the Corporation, and all such decisions when communicated to the Corporation, shall be binding upon the Corporation.

OPERATING AND OTHER EXPENSES

15. (1) The legal and other costs of incorporating and organizing the Corporation and the operating expenses of the Corporation, except for the provision of loan and equity capital referred to in sections 10 and 12, will be shared equally between Canada and the Province, by way of contributions to the Corporation, provided, however, that the total amount of such contributions by Canada in any fiscal year shall not exceed the amount of \$350,000, unless otherwise agreed in writing by the Federal Minister.

(2) Advances of funds by Canada and the Province to the Corporation on account of its estimated operating expenses may be made at such times and in such amounts as may be decided by the Ministers.

(3) The fiscal year of the Corporation shall end on March 31st of each year and the Corporation shall be required to-submit to the Ministers

- (a) by December 31st of each year, a budget of its proposed operating expenditures and a forecast of its estimated requirements for the loan and equity funds, for the ensuing fiscal year; and
- (b) within three months after the close of each fiscal year, and at any other time that may be required by the Ministers or either of them, a statement of its financial operations, in such form and detail and bearing such audit certificate as may be required by the Ministers, or either of them.

DURATION OF THE CORPORATION

16. The initial duration of the Corporation shall be for a period of five years from the date of this Agreement, but the Corporation may be wound up at any earlier time by mutual agreement of the Ministers. Not later than six months prior to the expiration of the said five-year period, the parties hereto will make a joint assessment of the operations of the Corporation, and if considered desirable by both parties, the existence and operations of the Corporation may be continued for such further period as may be mutually agreed by them, and approved by the Governor in Council and the Lieutenant-Governor in Council.

17. (1) In the event of the Corporation being wound up, its assets and liabilities, including the expenses of such winding up, shall be shared equally between the Province and Canada, except that:

- (a) All monies, securities, rights and other assets representing or derived from the loan capital provided pursuant to section 10 by Canada shall be the property of Canada and, subject to any necessary approval by Parliament, shall be accepted by Canada in full settlement of all obligations of the Corporation to Canada in respect of the repayment of the loan capital provided by Canada; and
- (b) all monies, securities, rights and other assets represented or derived from the equity capital provided pursuant to section 12 by the Province shall be the property of the Province, and, subject to any necessary approval by the Legislature of Newfoundland, shall be accepted by the Province in full settlement of all obligations of the Corporation to the Province in respect of the repayment of the equity capital provided by the Province.

(2) The Corporation, before being wound up, shall be required to execute all such assignments and other assurances as may be required to vest in Canada and the Province respectively the monies, securities, rights and other assets referred to in sub-section (1).

REPORTS, RECORDS AND AUDIT

18. The Board of Directors of the Corporation may make reports from time to time to the Minister and shall be required to make such reports as may from time to time be required by the Ministers or by either of them.

19. The Corporation shall be required to keep detailed and accurate reports of its financial operations and to make the same available for inspection and audit at all reasonable times by the representatives of Canada and the Province.

GENERAL

20. The provision of financing under this Agreement by Canada and the Province is subject to Parliament and the Legislature of Newfoundland, respectively, having appropriated the necessary funds for each fiscal year in which such financing is required.

21. No member of the House of Commons of Canada or of the Legislature of Newfoundland shall be admitted to any share or part of this Agreement or to any benefit to be derived therefrom.

22. This Agreement shall be governed by the laws of Newfoundland.

IN WITNESS WHEREOF this Agreement has been executed on behalf of Canada by the Minister of Regional Economic Expansion and on behalf of the Province by the Minister of Economic Development.

In the Presence of

GOVERNMENT OF CANADA

(Carmel Carrière)

Witness

(Jean Marchand)

Minister of
Regional Economic Expansion

GOVERNMENT OF THE PROVINCE
OF NEWFOUNDLAND

(Edward B. Power)

Witness

(H.R.V. Earle)

Minister of
Economic Development

