

Invest Toronto - Final Wind Up and Dissolution

Date: June 21, 2019
To: Executive Committee
From: Controller
Wards: All

SUMMARY

City Council directed staff to wind up Invest Toronto Inc. (Invest Toronto) on July 4, 2017. As a result of the creation of Toronto Global to promote foreign direct investment in Toronto and surrounding region, Invest Toronto was no longer required as a City corporation.

The corporation wind up process includes: completing pre-approved transactions, addressing residual employee obligations, settling liabilities, closing accounts, and completing independent financial audits of activity in 2018 and 2019. As part of the process, residual assets in the amount of \$4,242 were transferred to the City as shareholder. The City will retain Invest Toronto corporate records for seven years following the corporation's last fiscal year of activity in accordance with applicable legislation. In addition, City staff are registering Invest Toronto's former website address, slogan and logo to secure their use. As of June 12, 2019, Invest Toronto's assets and liabilities have been settled, as reflected in the audited financial statements (Statements) as at December 31, 2018 and June 12, 2019 attached to this report.

The receipt of this report represents the last step for Council as shareholder in the corporation wind up process. The receipt of this report is required to formally complete the process to dissolve the corporation under the Ontario *Business Corporations Act*.

RECOMMENDATIONS

The Controller recommends that:

1. City Council, as shareholder, receives for information this report and Attachment 1: Audited Financial Statements for Invest Toronto Incorporated for the Year Ended December 31, 2018, and Period Ended June 12, 2019 as the final report on the wind up of Invest Toronto Inc. from the appointed liquidator.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On March 27, 2019, City Council approved the City of Toronto's participation in Toronto Global for the period beginning April 1, 2019 and ending March 31, 2024 subject to the execution of a five-year funding agreement with Toronto Global.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX3.8>

On June 26, 2018, City Council held Invest Toronto's 2017 Annual General Meeting of the shareholder, received the 2017 Audited Financial Statements, and requested staff to protect Invest Toronto's intellectual property.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX35.11>

On June 5, 2018, the Invest Toronto Board authorized the Interim Invest Toronto CEO in consultation with the City Manager acting as Liquidator to finalize the transfer to the City of any remaining assets and liabilities and finalization any other financial transactions prior to dissolution of the corporation.

On July 4, 2017, City Council approved the Board-approved Invest Toronto transition plan and transfer of assets to Toronto Global, re-appointed a temporary Board of Invest Toronto, and resolved to voluntarily wind up Invest Toronto Inc. and appoint the City Manager to act as liquidator of the estate and effects of the corporation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX26.9>

On July 12, 2016, City Council approved participation in Toronto Global, a new Foreign Direct Investment Regional Agency.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX16.15>

ISSUE BACKGROUND

City Council authorized the establishment of Invest Toronto Inc. at its October 29-30, 2008 meeting pursuant to section 148 of the *City of Toronto Act, 2006* and Ontario Regulation 609/06. Invest Toronto was incorporated under the Ontario *Business Corporations Act (OBCA)* on November 13, 2008. The City is the sole shareholder.

Section 193 of the *OBCA* permits the shareholder to voluntarily wind up the corporation and appoint a liquidator. As part of the wind up process, the *OBCA* requires:

- The liquidator to file notice of the wind up with the Ontario Ministry of Government and Consumer Services, and publish the notice (subsection 193(4)).

- The liquidator satisfy all of the corporation's debts, obligations and liabilities, and distribute the property to the shareholder (subsection 221(1a)).
- The liquidator present accounting of the wind up to the shareholder, file a notice with the Ministry of Government and Consumer Services that the meeting was held, and publish the notice (section 205).
- The liquidator must seek consent from the Ministry of Finance to the dissolution for the corporation.
- The liquidator submit articles of dissolution to the Director, Ministry of Government and Consumer Services, along with consent from the Ministry of Finance (section 238).
- Upon receipt of the articles of dissolution, the Ministry of Government and Consumer Services shall endorse a certificate which shall constitute the certificate of dissolution. (Section 273, Subsection 239 (1)).

Subsection 236(2) of the *OBCA* states that no responsibility rests on the liquidator, or anyone to whom the custody of the records lies, five years after the date of the dissolution of the corporation.

Subsection 94(3) of the *Ontario Corporations Tax Act* requires corporations to keep tax related records and books of account for a period of seven years following the last fiscal year of activity, and until permission for their disposal is obtained from the Minister of Finance. This consent is considered given if Ministry-determined conditions related to verification that all tax obligations have been met (<https://www.fin.gov.on.ca/en/bulletins/general/retention.html>).

Finally, subsection s. 230(4)(b) of the *Income Tax Act, (Canada)*, states that every "person" is required to keep records and books of account until the expiration of six years from the end of the last taxation year to which the records and books of account relate. Under the *Act*, a corporation is considered a "person" for tax purposes.

COMMENTS

1. Liquidator Activities

Council as shareholder appointed the City Manager as liquidator of Invest Toronto for the purpose of winding up its business and affairs and distributing its property. The City Manager delegated this responsibility to the Chief Financial Officer and Treasurer, who in turn delegated the role to the Controller.

Since the decision to wind up the corporation, Invest Toronto has ceased carrying on any new business (as of July 6, 2017), completed its plan to transition its business to Toronto Global, prepared Annual General Meeting materials including audited financial statements for 2017, and assisted the liquidator with the wind up of the corporation. The liquidator and City staff have worked with former Invest Toronto staff to complete wind up activities. These activities include completing pre-approved transactions, addressing residual employee obligations, settling liabilities, closing accounts, and facilitating transfer of relevant Invest Toronto corporate records to the liquidator. In addition, an external auditor, PricewaterhouseCoopers LLP (PwC) was engaged to provide an audit

opinion on the Statements as at December 31, 2018 and June 12, 2019 (being the date that Invest Toronto settled its accounts). Prior to the settling of accounts, residual assets in the amount of \$4,242 were transferred to the City as shareholder. The Controller, acting as liquidator, has confirmed that all debts, obligations and liabilities of the corporation have been settled.

The last step in the wind up process for Council as shareholder is the receipt of this report and Attachment 1.

2. Retention of Corporate Records

Invest Toronto records include articles and by-laws, shareholder directions and agreements, a register of past directors, accounting records, minutes of meetings and resolutions of the directors and any committee. In addition, they contain documents to verify Invest Toronto tax obligations and entitlements have been met, and other business records. The Ontario *Business Corporations Act* and the *Income Tax Act* (Canada) provide the legislative basis for how long these records must be retained following dissolution.

The Ontario *Business Corporations Act* establishes that the liquidator or records custodian is not responsible for retaining corporate records once five years after the corporation's dissolution date has passed (subsection 236(2)). The *Income Tax Act* (Canada) sets out that records and books of account must be retained until the expiration of six years from the end of the last taxation year to which the records and books of account relate (subsection 230(4)(b)). The *Ontario Corporations Tax Act* requires corporations to keep records and books of account for a period of seven years following the last fiscal year of activity, and until written permission or general consent for their disposal is obtained from the Minister (subsection 94(3)).

To ensure compliance with all *Acts*, the City as liquidator will retain Invest Toronto electronic and hardcopy records for a period of seven years following the corporation's last fiscal year of activity. Under the Office of the Controller, Accounting Services will act as steward of the records, and the City Clerk's Office will administer storage and retrieval of records as required. After the seven year retention period has passed, and conditions set out by the Ministry of Finance have been met, the records shall be destroyed on the authorization of the Director of Accounting Services.

3. Protecting Invest Toronto Intellectual Property

City Council requested staff to ensure all intellectual property of Invest Toronto Inc. become City of Toronto property, and take all appropriate measures to protect the Invest Toronto name from use by other parties. Staff are making every effort to protect the Invest Toronto name and intellectual property from use by unauthorized parties. This includes the City registering on an annual basis the Invest Toronto logo, slogan and website address (domain name) so they cannot be used by other parties without the City's permission. Under current legislation, there is no proactive mechanism to protect the formal name of a dissolved corporation. However, if another party sought to use the Invest Toronto Inc. name for any purpose without the City's express permission, the City could mount a vigorous objection in court.

As part of the support Invest Toronto provided to Toronto Global to assist with of the start-up their operations, and to ensure potential investors working with Invest Toronto at the time of transition were well served, Invest Toronto business information (which may be considered intellectual property) was shared with Toronto Global. This arrangement was approved by the Invest Toronto Board and by Council in their approval of the Invest Toronto/Toronto Global transition plan. This sharing of information did not extend to permission to Toronto Global to use the Invest Toronto formal name, logo, slogan and website address in their representation.

4. Next Steps

Within 10 days of Council's receipt of this report and Attachment 1, the Controller as liquidator will file a notice with the Director, Ministry of Government and Consumer Services, stating that the final shareholder meeting was held, and publish the notice in the Ontario Gazette. On the expiration of three months after the date of the filing of the notice, and with the endorsement of the Ministry of Government and Consumer Services, the corporation is formally dissolved.

The City will retain Invest Toronto corporate records for seven years following the corporation's last fiscal year of activity in accordance with applicable legislation.

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SIGNATURE

Andrew Flynn
Controller

ATTACHMENTS

Attachment 1: Audited Financial Statements for Invest Toronto Incorporated for the Year Ended December 31, 2018, and Period Ended June 12, 2019