



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Wind-Up of Invest Toronto

Date: June 2, 2017
To: Executive Committee
From: City Manager
Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about labour relations or employee negotiations and involves personal matters about an identifiable person.

SUMMARY

In July 2016 City Council approved participation in Toronto Global whose mandate is to promote and attract foreign direct investment into the Greater Toronto Area. As a result, City Council requested that Invest Toronto be wound up subject to the receipt of a transition plan from the Invest Toronto Board of Directors.

Key items from the Board approved transition plan are summarized in this report with details provided in the confidential attachment. This report recommends that City Council as shareholder approve the plan and initiate the process to wind-up the Corporation.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council, as shareholder, approve the Invest Toronto transition plan in Attachment 1 and Confidential Attachment 2.
2. City Council, as shareholder, approve the transfer of assets from Invest Toronto Inc. to Toronto Global, including leasehold improvements and office equipment at an amount as determined by the Board of Directors in their unfettered discretion.

3. City Council resolve to voluntarily wind up Invest Toronto Inc. and appoint the City Manager to act, without security or further compensation, as liquidator of the estate and effects of the Corporation for the purpose of winding up its business and affairs and distributing its property and in due course to sign and deliver articles of dissolution to the Director under the *Business Corporations Act* and do all other things necessary or advisable in connection with the foregoing.
4. City Council, as shareholder, amend the size and composition of the Board of Directors of Invest Toronto Inc. to consist of three (3) members comprised of:
 - The Chair of the Economic Development Committee;
 - Two (2) public members
5. City Council end the appointments of all members of the Board of Directors of Invest Toronto Inc. immediately, and thank them for their service to the City of Toronto.
6. City Council re-appoint the following members to the Board of Directors of Invest Toronto Inc., at pleasure of Council, for a term of office ending the earlier of November 30, 2018 or the dissolution of the Corporation.
 - Councillor Michael Thompson, Chair, Economic Development Committee
 - Robert Howard Lane (Vice-Chair)
 - Lida Preyma
7. City Council approve an increase to the 2017 City Council approved Operating Budget for Economic Development and Culture of by \$0.890 million gross, and \$0 net, and increase the Non-Program budget by the same amount fully funded by revenue from Toronto Port Lands Company (TPLC) dividends provided to the City on a one-time basis, to permit the City to make a second payment in 2017 to Toronto Global to make payments for both 2016 and 2017 fiscal years.
8. City Council direct that the confidential information contained in Confidential Attachment 2 remain confidential in their entirety, as it pertains to labour relations or employee negotiations and personal matters about an identifiable person.

FINANCIAL IMPACT

The costs of wind up of Invest Toronto is \$0 net to the City of Toronto. Wind up costs will be funded through the Corporation's operating capital, with any residual assets remaining upon dissolution returning to the Toronto Port Lands Company (TPLC). It is estimated that \$227,000 will remain upon dissolution of the Corporation. Table 1 on Page 5 of this report details the gains and losses for Invest Toronto based on its transition plan.

On an ongoing basis the City financial commitment to Toronto Global is \$0.890 million annually to be paid from the Economic Development and Culture Operating Budget. Toronto Port Lands Company dividends paid to the City through the Non-Program budget are planned to cover these costs corporately.

The 2017 Council approved Operating Budget for Economic Development and Culture included the annual payment of \$0.890 million and the supporting funding from TPLC, however at that time the fiscal year cycle for Toronto Global was not known.

The contribution to Toronto Global is payable on December 1st each year, so an additional one-time \$0.890 million payment must be budgeted during 2017 to enable the City to meet both the 2016 and 2017 payment within the year. TPLC Dividends will be available to be received in the Non-Program budget to support both of these payments.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On May 31, 2017, the Board of Directors for Invest Toronto Inc. approved its final transition plan which outlines a proposal for the winding up of the business and affairs and distribution of the assets of the Corporation.

On February 15, 2017, City Council adopted the 2017 Capital and Operating Budgets, which identified dividends from Toronto Port Lands Company (TPLC) as the recommended funding source for the City's commitments to Toronto Global in 2017, 2018 and 2019 which are budgeted each year to be received by the City.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX22.2>

On July 12, 2016, City Council approved participation in Toronto Global, a new foreign direct investment regional agency. In doing so, City Council directed that:

- the first year of funding be subject to adjustments for transition aspects related to Invest Toronto;
- the business and affairs of Invest Toronto be wound up after an orderly transition;
- the Board of Directors of Invest Toronto report on the transition process and submit for shareholder approval, a proposal for the winding up of the business and affairs and distribution of the assets of the Corporation;
- Toronto Port Lands Company to continue to provide grants to Invest Toronto and to pay any portion not required in 2016 to the City for the purposes of funding the City's first year obligation to Toronto Global.

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

On February 19, 2014, City Council appointed 12 public members to the Board of Directors of Invest Toronto, including one individual to serve as Vice-Chair of the Board of Directors for a term ending March 2, 2016, with a renewal term of two years, or until a successor is appointed.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC48.1>

On October 29, 2008, City Council authorized the establishment and incorporation of Invest Toronto pursuant to section 148 of the City of Toronto Act, 2006 and Ontario Regulation 609/06, the City Services Corporation Regulation and the Business Corporations Act (Ontario).

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX24.1>

ISSUE BACKGROUND

The City of Toronto is sole shareholder of Invest Toronto, which was established in 2008 in order to engage the private sector in marketing and promotion activities to increase business investment and create desirable jobs in Toronto.

In July 2016 City Council approved participation in Toronto Global whose mandate is to promote and attract foreign direct investment (FDI) into the Greater Toronto Area (GTA). This collaborative approach recognizes that attracting FDI to the GTA results in positive benefits for the regionally integrated economy.

In approving participation in Toronto Global, City Council requested that the Board of Directors for Invest Toronto report on the full details of the transition process and submit for approval a proposal for the winding up of the Corporation. At the time the transition process was dependent on Toronto Global securing funding from government and its subsequent operating decisions based on the resources that were available.

Formal operations at Toronto Global began on February 3, 2017 following the signing of agreements with municipal partners (including the City of Toronto) and with federal and provincial governments.

As shareholder of Invest Toronto, the City via City Council has ultimate authority to approve any changes to Invest Toronto including any amendment or repeal of articles of incorporation, or proceedings for any winding up, arrangement, reorganization or dissolution.

COMMENTS

1. Invest Toronto Transition Plan

The launch of Toronto Global was actively supported by Invest Toronto which brought its best practices and insights to the new agency while maintaining client support to ensure seamless transition for potential investors.

Risks during the transition period were managed by the Corporation by conducting business planning on a quarter by quarter basis and by quantifying and assessing risks related to assets and long-term obligations. This due diligence work has informed the Board in its negotiations with Toronto Global on the transfer of assets and liabilities to protect Invest Toronto's interests while ensuring a successful launch for the new agency.

The Board of Directors of Invest Toronto approved its final transition plan on May 31, 2017 and has now provided it to the City Manager for City Council's approval. The plan outlines the proposal for the winding up of the business and affairs and distribution of the assets of the Corporation.

Critical elements of the transition plan and costs that can be made public are summarized in Table 1 and described in detail below. It is recommended that City Council approve the transition plan including the transfer of assets as described below and voluntarily wind up the Corporation. Formal dissolution will likely occur in 2018 subject to the resolution of issues outlined in the Confidential Attachment.

Table 1 - Summary of Key Elements of the Invest Toronto Transition Plan

Item	Activity	Gain (Loss) to Invest Toronto
Insurance for Directors and Officers	Additional insurance purchased during Wind-Up	(\$13,000)
Leasehold Improvements & Equipment	Acquired by Toronto Global	\$87,000
Intellectual Property and Corporate Records	To be acquired by the City	-
Lease	Assigned to Toronto Global at no cost	\$0
Human Resources (incl. Inherited Successor obligations and Vacation pay)	Employees hired by Toronto Global. Liabilities assumed by Toronto Global and a credit will be paid by Invest Toronto	(\$190,000)
Operating Services Agreement	Reimbursement to Invest Toronto for services provided to Toronto Global in 2016.	\$343,000
Total		\$227,000

2. Governance & Corporate Issues

Board Composition

The Board has requested that City Council reduce Board size and composition during the transition process to three members composed of the Chair, Economic Development Committee and two (2) public members. The recommended approach to composition is in line with the Articles of Incorporation which require a minimum of one director and maximum of fifteen, and will allow for a streamlined decision making process leading up to dissolution.

For continuity purposes, the Board has requested that the public members be the existing Vice-Chair and the Chair of Invest Toronto's Transition, Audit and Risk Management Committee.

These public members were originally appointed on March 3, 2014 with their term of office ending on March 16, 2016 or until a successor was appointed.

It is recommended that City Council re-appoint the existing leadership of the Board. A formal re-appointment will create a renewed mandate for these board members with their term of office ending at either dissolution of Invest Toronto or the end of this term of City Council. Should the term run to November 30, 2018 their total length of service, including re-appointment, will be less than the maximum outlined in the Public Appointments Policy.

Board Insurance

Invest Toronto has acquired additional insurance for directors and officers to insure against unforeseen future claims.

Corporate Issues

The Board anticipates that the Interim Chief Executive Officer and the Chief Financial Officer will continue to be officers of the Corporation and that corporate records will be transferred to the City as sole shareholder. The transfer of records will be coordinated by the City Manager's Office and the City Clerk's Office.

Finally, on May 31, 2017 the Invest Toronto Board received a report from the Auditor General on the review of outstanding audit recommendations on the "Operational Review of Invest Toronto Inc." dated December 3, 2014. Invest Toronto management advised the Auditor General that these recommendations have been considered as part of the transition of operations to Toronto Global.

Consequently, the Auditor General has advised that they will not perform any further follow-up work and will report on this status to the June 2017 meeting of the Audit Committee within a consolidated report on implementation status of outstanding recommendations from previous audit reports that relate to Agencies and Corporations.

Winding-up Procedure

The report recommends that the corporation be voluntarily wound up under the provisions of the Business Corporations Act where the shareholders appoint a liquidator of the estate for the purpose of winding up its business and affairs and distributing its property.

The Corporation is required to file notice of a resolution requiring the voluntary winding up of the Corporation with the Director of Corporations within ten days after the resolution has been passed and publish the notice in the Ontario Gazette within twenty days after the resolution has been passed. A voluntary winding up commences at the time of the passing of the resolution requiring the winding up or at a later time as specified in the resolution. The Corporation is required to immediately cease carrying on business.

The liquidator settles the debts of the Corporation, disposes of its assets and distributes any net proceeds of the winding up to the shareholder. Upon completion of the winding up the liquidator reports to the shareholders at a shareholders meeting. Within ten days after the meeting the liquidator files a notice with the Director of Corporations stating that the meeting was held and publishes the notice in the Ontario Gazette. On the expiration of three months after the date of the filing of the notice, the Corporation is dissolved.

3. Assets (including Intellectual Property)

Invest Toronto has negotiated that tangible capital assets will be acquired by Toronto Global in their entirety. Tangible capital assets are mainly comprised of leasehold improvements and used office equipment (tables, chairs, computers, etc.). Used equipment has been agreed to be purchased by Toronto Global at their net book value which is equal to \$87,000. As per the *Business Corporations Act* (Ontario), shareholder approval is required before a transfer of these assets can occur.

Invest Toronto customer lists and data were transferred to Toronto Global early during the transition process to ensure continued client servicing and continuity in securing of new prospects. This intellectual property (IP) was critical to the launch of the new agency.

It is anticipated that remaining IP will be transferred to the City as sole shareholder. The Corporation's IP includes the business name, brands, slogans, and websites (including content). Retaining this IP will ensure the City protects the brand established by City Council to promote and market Toronto.

4. Liabilities

As of February 1, 2017, Toronto Global assumed the lease for Invest Toronto's office space at 225 King Street West. By disposing of the lease the Corporation has, without financial impact, removed the most significant long-term financial liability facing Invest Toronto. Other financial liabilities such as short-term contracts have either been terminated or assumed by Toronto Global.

Toronto Global has also offered employment to Greater Toronto Marketing Alliance (GTMA) and Invest Toronto staff as of December 19, 2016. As set out in the September 2015 report to Council, this meets a key City interest which was an assurance that existing staff from Invest Toronto and the GTMA will have every opportunity to join the new organization.

Toronto Global has also agreed to take on Inherited Successor (future severance) and vacation pay obligations for Invest Toronto employees in return for a financial credit. A \$190,000 payment has been agreed to by the Invest Toronto Board in return for discharging these long-term obligations. Further details on these matters are contained in the Confidential Attachment.

5. Financial Reconciliation

Since early 2016 Toronto Global has relied on Invest Toronto for a number of administrative services. These costs are to be recovered under an operating services agreement which will result in a \$343,000 positive impact to Invest Toronto.

It is anticipated that there will be ongoing collection and disbursement of receivables and payables, including reimbursement of some costs to Toronto Global. These are to be funded through working capital previously funded by TPLC.

As directed by City Council, Invest Toronto's capital and operating expenditures have been supported by an annual grant from TPLC. Under this arrangement, it is anticipated that any residual assets, including unused operating funds, would be returned to TPLC if not required. Currently, it is estimated that a small amount of funds will return to TPLC (see Table 1).

6. Payments to Toronto Global

On December 2, 2016, the City formally executed the (Municipal) Funding Agreement for Toronto Global along with the cities of Brampton and Mississauga and the regional municipalities of York, Durham and Halton. As previously reported to City Council, this Agreement commits the City to three annual contributions of \$890,412 (Apr 1 - March 31) ending March 31, 2019. Amounts are determined on a per capita basis, with payments due upon the anniversary of the agreement subject to municipal budget approvals.

2016-2017 Payment

In approving the 2017 Operating Budget, City Council allocated \$0.890 million in the Economic Development & Culture Budget for the first year contribution to Toronto Global (2016-2017) to be paid for through dividends received from TPLC, resulting in a \$0 net impact. The TPLC Board declared this dividend on May 11, 2017 and the City will now be able to make the payment to Toronto Global. As contemplated by City Council in 2016, the first year payment will be made by the City with the understanding that adjustments for transition impacts have now been finalized between Toronto Global, Invest Toronto and TPLC.

2017-2018 Payment

It is recommended that a budget adjustment be made to allow the City to make a second payment on December 2, 2017 for the 2017-2018 year. While this will result in two payments in 2017, this will align the City's cash flow to Toronto Global on the schedule as contemplated and required by the Funding Agreement and will provide the new Agency with additional operational certainty. This adjustment will include an expenditure increase in Economic Development and Culture for the payment as well as a revenue increase in the Non-Program budget to receive the additional dividend from TPLC.

City Council identified dividends from TPLC as the recommended funding source for the City's commitments to Toronto Global in 2018 and 2019 which are budgeted each year to be received.

7. Next Steps

The City, along with the Board, will continue to assess requirements related to the wind up and dissolution of Invest Toronto as per the obligations set out in the Business Corporations Act (Ontario) including the wind-up procedure described in section 2 of this report and pursuant to the Confidential Attachment.

This report recommends that the City Manager be appointed as liquidator of the estate and given delegated authority to complete the wind down and dissolution process. City staff anticipate these matters will be resolved by the first quarter of 2018. As per the Business Corporations Act (Ontario) City Council, as shareholder, will be required to approve a final report from the City Manager as liquidator. City Council will also be required to hold an annual general meeting of Invest Toronto in 2018 to approve 2017 Audited Financial Statements.

CONTACT

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SIGNATURE

Peter Wallace
City Manager

ATTACHMENTS

Attachment 1 - Invest Toronto Transition Plan

Confidential Attachment 2 - Invest Toronto Transition Plan Pertaining to Human Resources