



REPORT

To: ONE Joint Investment Board
From: Heather Douglas, WeirFoulds LLP, Counsel
Date: May 19, 2020
Re: ONE JIB Terms of Reference
Report: 20-006

1. RECOMMENDATIONS

It is recommended that at its initial meeting on May 19, 2020 ONE JIB adopt and approve the ONE JIB Terms of Reference, in their current form, that will form part of the ONE JIB Agreement.

A copy of the Terms of Reference is attached.

2. SUMMARY

The Terms of Reference form part of the ONE JIB Agreement, which is the subject of a separate report. The ONE JIB Agreement and the Terms of Reference have been structured so as to provide ONE JIB with the necessary degree of autonomy and independence to carry out its work. While ONE JIB is appointed by, and answerable to, the Participating Municipalities, it is not directly controlled by Participating Municipalities. ONE JIB is intended to be self-governing. Following the formation of ONE JIB, it is the members of ONE JIB who have authority to amend the Terms of Reference in accordance with the amending rules contained therein.

The Terms of Reference constitute the charter for ONE JIB. Together with Exhibits, the Terms of Reference form a set of comprehensive rules, policies and guidelines which detail the responsibilities of each ONE JIB member, how members are appointed and can resign or be removed, how meetings are conducted and actions taken, and how any conflicts can be managed or dealt with.

3. BACKGROUND

ONE JIB is a “joint municipal service board” established pursuant to the *Municipal Act, 2001* and the Regulations thereunder. As a joint municipal service board, ONE JIB and its members are subject to certain statutes in addition to the *Municipal Act, 2001* including the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.

This legislative framework requires that ONE JIB adopt certain practices and procedures with respect to the following:

- a Code of Conduct
- Closed Meeting Investigations and a Closed Meeting Investigator
- an Integrity Commissioner
- a Procedure By-Law

The provisions of the Terms of Reference are intended to fulfill that requirement.

Like the ONE JIB Agreement, the Terms of Reference have been developed with input from the municipal and investment communities, including ONE Investment’s members (LAS and CHUMS), the Founding Municipalities and the members of the Investment Advisory Committee.

4. ANALYSIS

The following are highlights of the Terms of Reference. (References to sections and exhibits relate to the Terms of Reference and the Exhibits thereto).

(a) **Duties and responsibilities** (Sections 3.2, 3.3 and 7.1)

- Members to comply at all times with applicable law
- Basic duty is to (i) act honestly and in good faith with a view to the best interests of the Participating Municipalities; and (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (the “Prudent Standard of Care”) (Section 7.1)
- Enumerated responsibilities include:
 - o reviewing the investment policy of each Participating Municipality
 - o adopting an appropriate investment plan for each Participating Municipality which gives effect to the investment policy
 - o overseeing the performance of ONE Investment and the performance of the services providers engaged by ONE Investment, including portfolio managers, custodians, plan administrators, auditors, bankers, brokers and other professionals
 - o providing prescribed reporting to the Participating Municipalities

- o providing the Participating Municipalities with advice, observations and overall direction with respect to the investment of their money not required immediately

(b) Reports to be made (Sections 3.4 and 3.5)

- Annual investment report is made within 90 days of year-end to each Participating Municipality
 - o investment performance reporting
 - o compliance with investment policy and plan
 - o other (e.g. market commentary; discussion and analysis)
- Report any non-compliance with investment policy or investment plan to treasurer of the affected Participating Municipality
- Report to securities regulators material breaches of securities legislation applicable to ONE JIB or ONE Investment

(c) Right to independent counsel (Section 3.8)

- ONE JIB can engage independent professional advisors including lawyers and accountants where it believes it is necessary

(d) Number of members and quorum for meetings (Section 4.1)

- Initially a minimum of seven and maximum of 10 members, but can be changed by Participating Municipalities in accordance with ONE JIB Agreement
- Majority constitutes quorum for meetings

(e) Nomination process for appointment of new members (Section 4.3)

- Nominating Committee formed by ONE JIB and ONE Investment will consist of between three and nine members
- Candidates must be acceptable to ONE Investment
- Candidates presented to ONE JIB

- If ONE JIB fails to approve the candidates presented by the Nominating Committee, then Chair of ONE JIB can form a new Nominating Committee
 - In the event of an impasse, vacancies may be filled by the Participating Municipalities
- (f) **Term of office** (Section 4.9)
- Staggered three year terms (to ensure continuity and orderly turnover); maximum term of nine years total
- (g) **Vacating office, Resignation and Removal from office** (Sections 4.6, 4.7 and 4.8)
- ONE JIB has general power to remove any member from office on majority vote of other members (Sections 3.2 and 4.8)
 - A member must resign in certain circumstances (e.g. personal circumstances that may create conflict of interest or have adverse effect on member's effectiveness such as accepting directorship with a competing financial services provider) unless otherwise agreed by ONE JIB and ONE Investment (Section 4.7)
 - A member automatically ceases to hold office in certain common enumerated circumstances (e.g. death, incapacity, habitual absence from meetings without excuse, etc.). In addition, if a Municipal Treasurer Representative's Participating Municipality withdraws from the ONE JIB Agreement then that Municipal Treasurer Representative ceases to hold office unless the individual becomes the treasurer of another Participating Municipality (Section 4.6)
- (h) **Committees** (Section 4.12)
- ONE JIB can form such committees or subcommittees (standing or *ad hoc*) as it considers to be advisable
- (i) **Self-Assessment** (Section 4.13)
- In accordance with good corporate governance practice, ONE JIB to conduct self-assessment at least annually
- (j) **Persons entitled to participate in meetings of ONE JIB** (Section 5.3)
- Any person may participate in a meeting in accordance with ONE JIB's Procedure By-law and on invitation of Chair or consent of ONE JIB

- ONE Investment and its representatives may be present at ONE JIB meetings when submitting a matter for ONE JIB’s recommendation or approval
- However, ONE JIB must hold at least one segment of one meeting annually at which ONE Investment or its representatives are not present

(k) Conflicts of Interest (Sections 6.1, 6.2; also Section 4.7)

- *Municipal Conflict of Interest Act* applies to ONE JIB members
- Code of Conduct sets out details of conflict disclosure requirements
- Secretary available to assist members with disclosure process
- Member who discloses conflict to take direction from Chair, on advice from Secretary

(l) Protection of ONE JIB Members against liabilities (Sections 7.1, 7.2, 7.3 and 7.4)

- All members of ONE JIB are indemnified by Participating Municipalities with respect to claims made against a member by third parties for losses arising from the member’s actions in connection with the management and control of investments on behalf of a Participating Municipality, unless such losses were caused by the member’s own willful misconduct or fraud
- Members are not liable to ONE Investment or any Participating Municipality for investment losses so long as the member’s actions were consistent with the Prudent Standard of Care referred to in Item 4 (a) above
- Members are indemnified by ONE Investment for all claims and ONE JIB or ONE Investment may purchase insurance to cover such claims

(m) Compensation of ONE JIB Members (Section 8.1; Exhibit D)

- Initial compensation set by Founding Municipalities together with ONE Investment as set out in Exhibit D as follows:
 - o \$750 per meeting for the Chair, the Vice Chair and members of the Board and \$500 per business meeting
 - o The Chair receives remuneration of \$10,000 annually
 - o The Vice Chair receives remuneration of \$7,500 annually

- o Members of the Board receive remuneration of \$5,000 annually
- Future changes to compensation to be set by ONE Investment, in consultation with ONE JIB

Municipal Treasurer Representatives not eligible for compensation

(n) **Code of Conduct** (Exhibit A)

- Code is required by *Municipal Act, 2001* to promote good governance and maintain public confidence in ONE JIB
- Code modeled on Codes adopted by Ontario municipalities governing conduct of their own members
- Code sets out detailed list of professional and ethical standards to be complied with by all members of ONE JIB in the conduct of their day-to-day duties
- Code covers broad spectrum from general principles of honesty, loyalty and civility to specific requirements such as the use of ONE JIB property and confidential information

(o) **Meetings open to the public other than “Closed Meetings”** (Exhibit B)

- *Municipal Act, 2001* requires all meetings to be held in public subject to certain listed exceptions when closed meetings are permitted. Exhibit B lists circumstances when ONE JIB meetings may be closed including, for example, where the meeting involves litigation or employment matters where confidentiality and privacy concerns may arise
- Exhibit B also reflects the *Municipal Act, 2001* requirement that certain meetings, or portions thereof, *must* be closed if they involve a request under the *Municipal Freedom of Information and Protection of Privacy Act* or an ongoing investigation by the Ontario Ombudsman under the *Ombudsman Act* or the Closed Meeting Investigator referred to in Item 4 (q) below

(p) **Public Disclosure of Records** (Exhibit C)

- The *Municipal Freedom of Information and Protection of Privacy Act* entitles members of the public to request the disclosure of records from municipal entities, including ONE JIB, subject to certain exceptions

- Exhibit C lists the kind of records of ONE JIB that fall under the statutory exceptions and which it may refuse to disclose, including, for example, records from closed meetings, confidential advice, trade secrets, financial or labour relations information and the like

(q) **Integrity Commissioner and Closed Meeting Investigator** (Exhibit A and Exhibit E)

- The *Municipal Act, 2001* mandates the appointment of an Integrity Commissioner to investigate and report on alleged contraventions of Codes of Conduct, and a Closed Meeting Investigator to investigate and report on any complaints received by a municipal entity relating to proceedings in any closed meetings held by it
- At its initial meeting ONE JIB will appoint the law firm of Aird & Berlis LLP as its initial Integrity Commissioner and Closed Meeting Investigator, after consultations with ONE Investment and representatives of the Founding Municipalities
- Any successor Integrity Commissioner or Closed Meeting Investigator will be appointed by ONE JIB in consultation with representatives of the Participating Municipalities

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