

**Discussion Paper**  
**Business Corporations Act**  
**Securities Transfer Act**

## **1. Introduction**

This discussion paper has been prepared by the Department of Justice and Public Safety (the Department) in order to facilitate public consultation regarding proposed new legislation consisting of:

- A new Business Corporations Act to replace Part I of the Companies Act; and
- A new Securities Transfer Act based on uniform Canadian securities transfer legislation.

All interested persons are invited to provide written input on the discussion paper and the draft legislation. On request, the Department staff will also arrange meetings with any interested persons.

Draft legislation was initially released for consultation in 2014. Comments were received and reviewed. Subsequently, the Department has developed proposed amended legislation and a second comment period will take place.

Comments should be submitted by September 9<sup>th</sup>, 2016 to: Joan MacKay

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## **2. Business Corporations Act**

### ***2.1 Draft legislation***

Draft legislation is attached as Appendix A.

### ***2.2 Background***

The PEI Companies Act was enacted in 1888 as The Prince Edward Island Joint Stock Companies Act. This statute provided for incorporation upon successful application to the Lieutenant Governor in Council for the issuance of letters patent. Prior public notice of intention to incorporate was required. The statute has remained substantially unchanged to date, with its name shortened in 1949 to the Companies Act. In 1984, the power to incorporate was transferred from Cabinet to the Minister with public notice given after incorporation.

The draft legislation is based on the Canada Business Corporations Act (CBCA). With the exception of Nova Scotia, all common law provinces have adopted forms

of business corporations acts more or less similar to the federal act. The PEI draft (PEIBCA) (Appendix A) incorporates many of the recent amendments made to the CBCA.

### **2.3 *CBCA consultation***

Industry Canada has consulted on proposed further amendments to the CBCA. Comments closed on May 15, 2014. These amendments primarily involve an expanded role for the corporate regulator in relation to corporate governance and shareholder participation in large publicly traded companies. Comment letters in response to this consultation are available on the Industry Canada website. Generally, it is the position of the Department that it is not appropriate to regulate public companies as such through corporate legislation. This is a role better undertaken by the securities regulatory authorities.

### **2.4 *Distributing corporations***

The PEIBCA does adopt the distinction between “distributing corporations” and other corporations of the business corporations model. Distributing corporations will be defined by regulation to include corporations that are reporting issuers under Canadian securities legislation in any of the provinces and territories. While it is recognized that few, if any, PEI corporations will be distributing corporations, the legislation will permit the incorporation of distributing corporations which will be reporting issuers subject to Canadian securities regulation.

### **2.5 *Insider-Trading, take-overs and proxies***

The Department requests comment on whether the PEIBCA should include the sections relating to insider trading (sections 101 to 105), the details of proxy solicitation (sections 124-129) and take-over bids (sections 167-168).

### **2.6 *Professional corporations***

Unlike the business corporation acts of some of the other provinces, the PEIBCA does not specifically provide for nor does it prohibit the incorporation or use of professional corporations. As is the case under the existing Companies Act, each profession will be required to evaluate whether its members can carry on practice through a professional corporation in accordance with its own legislation and its own governing body.

Regulations under the PEIBCA will include a regulation similar to the CBCA regulation prohibiting the use of a name that connotes approval of a professional organization without consent of the organization.

### **2.7 *Shareholder information***

The PEIBCA does not require filing of shareholder information with the Corporate Registry. Shareholder information must be retained by the corporation at its registered office or other designated location in the province and the corporation must make this list available, on payment of a reasonable fee, to any person who

requests it. In certain circumstances the list may be maintained outside the province if there is computer access to the information from a normal business location in the province.

## **2.8 *Prohibited loans and guarantees***

The PEIBCA does not include a section comparable to existing section 69 of the Companies Act dealing with prohibited loans and guarantees of a corporation to its directors, officers, shareholders and employees, and setting out two solvency tests for when those loans are permitted. Section 69 was amended in 2002 to remove the second solvency test (which was problematic in practice) where there is unanimous consent of the shareholders.

The latest amendments to the CBCA removed the comparable CBCA provision entirely, relying on enhanced directors' liability to ensure only appropriate actions are taken by the corporation. Certain other provinces have adopted an interim position requiring simple disclosure of loans and guarantees to shareholders. Comments are welcomed on whether the PEIBCA should include a section comparable to the amended Companies Act, section 69, or an interim position as in other provinces, or whether the Act should remain silent on this issue.

## **2.9 *Director residency***

The PEIBCA does not place any residency requirements on directors of corporations. This is consistent with our present position under the Companies Act. As an anti-money laundering and anti-corruption provision, the PEIBCA does include a requirement that a lawyer entitled to practice law in the province provide a certificate in the form the Director of Corporations fixes where there is no PEI resident director.

## **2.10 *Directors' liability and shareholder remedies***

The PEIBCA includes the enhanced directors' liability provisions of the CBCA along with directors' liability for wages. This is significantly different from the legal position of directors under the Companies Act which is governed by the common law. The PEIBCA also includes enhanced shareholders remedies in accordance with the CBCA.

## **2.11 *Unlimited liability corporations***

The PEIBCA includes provisions which permit the incorporation of unlimited liability corporations (ULC). The ULC is a hybrid entity since it is treated as a corporation for Canadian tax purposes but disregarded for US tax purposes. The ULC may be an attractive tax-avoidance vehicle for US investors expanding into Canada. At present the ULC business structure is offered by Alberta, British Columbia and Nova Scotia. The PEI provisions have been modeled on the Alberta Business Corporations Act.

## **2.12 *Transitional***

The PEIBCA sets a three year transitional period for continuance of all Companies Act Part I companies under the new legislation. At the end of that period, companies which have not continued will be automatically dissolved by operation of law.

Dissolved companies can revive under the new legislation if required.

The Companies Act will remain in force for the purposes of Part II non-profits and for any other private act companies which rely on its provisions. The PEIBCA prohibits any new incorporations, continuances or revivals under Part I of the Companies Act upon the coming into force of the PEIBCA. The PEIBCA also includes a provision permitting the continuance of private act companies under the PEIBCA.

### ***2.13 On-Line Corporate and Business Names Registry***

The Department is working toward transitioning from a paper-based Corporate and Business Names Registry (“Registry”) system over to a fully on-line system in which the authentic Registry documents are electronic, and where most functionality takes place on-line.

The new system would hold all data filed under the proposed new Business Corporations Act, as well as all partnership and sole proprietorship data filed under the current Partnership Act.

Certain information from the paper-based Registry is currently available electronically (i.e. through a searchable online database and published weekly in the Royal Gazette and archives).

The Department is also considering making certain data sets from the new online system open and available for the public.

## **3. Securities Transfer Act**

### ***3.1 Draft legislation***

A draft Securities Transfer Act (STA) is also attached. It is proposed that the new STA will be brought into force at the same time the PEIBCA is brought into force. Under the PEIBCA, transfer or transmission of securities is governed by the proposed STA.

### ***3.2 Background***

Current Canadian law in this area is uniform based on a Uniform Securities Transfer Act developed by the Uniform Law Conference of Canada. All provinces and territories have adopted the uniform legislation with the exception of PEI.

The securities transfer legislation across the country has replaced the sections in provincial and territorial corporate statutes governing the transfer of shares. Consequential amendments have also been made to the personal property security legislation in the jurisdictions and to the judgment execution legislation in the jurisdictions.