

# Dual Purpose Corporate Structure Legislation: Stakeholder Engagement Report

May 2014

Prepared on behalf of the Social Enterprise Panel by Deloitte

# Open letter to Government

In January 2014, the Ministry of Consumer Services asked a volunteer Panel of stakeholders with expertise in social enterprise to explore the potential for new corporate structure legislation in Ontario. Deloitte facilitated the process and wrote the report on behalf of the Panel. This initiative is part of the broader Social Enterprise Strategy for Ontario announced by the Ministry of Economic Development, Trade and Employment in September, 2013.

A social enterprise may be defined as:

**A corporate entity that exists primarily to promote public benefit using business strategies, building social and financial capital, and offering innovative ways of operating for social and / or environmental purposes.**

The field of social enterprise is dynamic and growing rapidly, driving social change. Social entrepreneurs around the world along with impact investors are using business solutions to target societal challenges in innovative ways. New businesses are being developed with social objectives, and existing ventures are being transformed with a new mission to create social value.

Ontario has several corporate structures currently used by social entrepreneurs seeking to improve communities. However, there is no corporate structure that explicitly enables social entrepreneurs and corporations seeking both a social and financial return. Ontario has an opportunity to join British Columbia and Nova Scotia, and a growing number of countries around the world, as a leading jurisdiction for social purpose businesses.

The Panel was asked to “explore introducing legislation to enable the creation of new ‘hybrid’ corporations (e.g., for-profit corporations that are dedicated to a social purpose, and required to re-invest a portion of profits into that social purpose)”.<sup>1</sup> It looked at how best to enable, accelerate and legitimize the businesses being created by combining market forces with a social mission.

The Panel considered whether dual purpose corporate structure legislation could benefit the social enterprise field in Ontario. Although there were mixed views on whether legislation should be introduced, the majority supported the legislation, while some did not. If the government decides to proceed with this legislation, the Panel concluded that legislation should provide a structure that protects the social mission and attracts investment. The legislation should provide clarity for owners and directors and lower the overall cost of establishing and operating dual purpose corporations. This report details the structure of potential legislation and the balance of interests needed to encourage multiple bottom line businesses.

The Panel also recommends that government take further steps to promote and encourage the field of social enterprise, and ensure that any legislation does not negatively impact other forms of social enterprise, including for-profits, not-for-profits, charities and co-operatives. The 14 member Panel

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<sup>1</sup> Ontario Government (2013) Impact A Social Enterprise Strategy for Ontario [Online] Available at: <https://dr6j45jk9xcmk.cloudfront.net/documents/697/impact-socialenterprise.pdf> [Accessed on 22 April 2014]

represents a wide range of interests and expertise including social entrepreneurs, impact investors, representatives from the not-for-profit sector, and lawyers. Panel members worked collaboratively in the public interest to try to reach a consensus on recommendations for dual purpose corporate structure legislation for Ontario. While the panel was unable to reach consensus on whether dual purpose corporate structure legislation should be introduced, it did develop recommendations on what it should look like if it is introduced. This report documents areas where the panel achieved consensus and where it has not been possible to reach agreement.

The body of the report is divided into two main sections. The first section looks at the current state of the field of social enterprise and key challenges that could be addressed by dual purpose corporate structure legislation. The second section reviews design principles and recommendations for a dual purpose corporate structure. Major components of the structure include:

- Mixed social purpose and private interest
- Distribution constraints
- Corporate governance
- Reporting requirements
- Oversight

In addition, the report includes background information which supported the discussions, as well as instances where several options were considered.

The Panel was encouraged by the government's consideration of possible legislative and regulatory changes to help attract more private capital for social good. The Panel recognized that legislation would be one component of a multi-pronged approach to help make Ontario a leading jurisdiction in North America for social enterprise.

All Panel members share a strong commitment to improving social outcomes through innovative organizations. The Panel hopes that this report will be carefully considered by government and encourage further discussion and debate amongst Ontarians on how best to support and inspire continued growth in the field of social enterprise.

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**Scott Kaplanis**  
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# Summary of recommendations

The following 15 recommendations summarize the key content of this report.

## Recommendations

1. **Dual purpose:** Any proposed legislation should create a new form of share capital corporation with a dual purpose that includes a mandated social purpose. Proposed legislation should allow organizations to pursue profit-making activity as long as the necessary portion of profits/assets/revenue is directed towards its social purpose.
2. **Equity:** Any proposed legislation should enable dual purpose corporations to attract share capital from investors seeking both a financial and a social return. It should also enable founders, employees and other stakeholders to have equity in the organization.
3. **Support for all social enterprise:** Any proposed legislation should complement existing legislation used for social enterprises and the government should support the full spectrum of social enterprise including for-profits, not-for-profits, charities and co-operatives. A new corporate structure should not negatively impact existing social enterprises. Proposed legislation should allow social enterprises to incorporate under the legislation to which they are best suited by providing, where appropriate, provisions to allow organizations to continue into other corporate structures.
4. **Articles of incorporation:** Any proposed legislation should require the organization to have a statement of its social purpose in its articles. The statement should include the activity(ies) being pursued and / or outcome(s) sought.
5. **Definition of social purpose:** Any proposed legislation should use either a “reasonable person test” or define social purpose (e.g., a purpose that is beneficial to society or a segment of society beyond just shareholders, directors or other persons related to the company). The legislation should include a process to allow the definition to be modified over time, as required.
6. **Distribution constraints:** Any proposed legislation should establish distribution constraints on assets/profits to protect the organization’s social purpose and help develop a brand to attract impact investors and consumers. Distribution constraints should still allow the organization to share some portion of its profits with investors.
7. **Director responsibilities:** Any proposed legislation should require directors to consider the organization’s social purpose. It should also require a minimum number of directors. Directors should not be restricted from receiving compensation.
8. **Shareholder rights:** Any proposed legislation should have the same requirements as Ontario’s Business Corporations Act (OBCA) regarding shareholder approval (two-thirds of the votes cast at a meeting or 100% approval in writing) for fundamental changes, contain a right of dissent for shareholders for certain fundamental changes, and provide similar rights of shareholders, creditors

## Recommendations

and other stakeholders as under the OBCA to bring claims for grievances.

9. **Annual social benefit and financial reporting:** Any proposed legislation should require organizations to report annually on the organization's activities and outcomes aimed at its social purpose (a social benefit report) and include enough financial information to demonstrate that the financial obligations associated with the distribution constraints are being met.
10. **Administrative proportionality:** Reporting requirements under any proposed legislation should be streamlined to include only those elements necessary to achieve transparency objectives.
11. **Reporting transparency:** Any proposed legislation should require the directors to approve the social benefit report. The report should be provided to the shareholders, and be publicly accessible.
12. **Financial statements:** Any proposed legislation should require that financial statements be approved by the directors and sent to shareholders.
13. **Flexible regulatory approach:** Any proposed legislation should establish a framework for a basic regulator that provides flexibility and does not impede momentum for this new corporate structure to flourish. There should be a review process to develop more detailed regulation of the sector by a regulator if required.
14. **Regulator:** A regulator should be established to approve and review eligibility, and manage the filing of annual social benefit reports. Any proposed legislation should enable cost recovery.
15. **Public input:** This report should be made available to the public to encourage broader input on the recommendations and considerations set out by the Panel.

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# 1. Background

## 1.1 Purpose

In September 2013, the Ontario Government launched *Impact: A Social Enterprise Strategy for Ontario*, to advance Ontario's leadership in unlocking the potential of social entrepreneurship. The Strategy includes a commitment to “explore introducing legislation to enable the creation of new ‘hybrid’ corporations (for example, for-profit corporations that are dedicated to a social purpose, and required to re-invest a portion of profits into that social purpose).”<sup>2</sup>

The Ministry of Economic Development, Trade and Employment (MEDTE) is leading the government's approach in the field of social enterprise. The Office for Social Enterprise, located within the MEDTE, is coordinating and delivering on a variety of branding, promotion and social finance programs.

The Ministry of Consumer Services (the “Ministry”) is working with MEDTE in exploring the potential of new “hybrid” legislation for social purpose businesses as part of its broader mandate to modernize the province's business laws. As a first step in considering potential legislation, the Ministry asked a group of stakeholders with experience and interest in social enterprise to come together and provide advice to government. The Social Enterprise Panel met for six workshops from February to April 2014 that were facilitated by Deloitte. During the workshops, the Panel considered potential legislation to establish a new corporate structure that could attract investment to for-profit social enterprise organizations in Ontario, and enable these corporations to pursue a *dual purpose*: a social/environmental purpose as well as a private, for-profit interest. This report summarizes the advice of the Panel.

The report is also intended to provide a window into the Panel's discussions. As a result, this report includes a discussion of options that were considered by the Panel but did not lead to recommendations.

All Panel members share a strong commitment to improving social outcomes through innovative organizations. The Panel hopes that this report will also encourage further discussion and debate amongst Ontarians on how best to support and inspire continued growth in the field of social enterprise.

## 1.2 Report structure

The body of the report is divided into two main sections. The first section looks at the current state of the field of social enterprise and the key challenges that would be addressed by dual purpose corporate legislation. The second section reviews design principles and key components for a dual purpose corporate structure, including:

- Mixed social purpose and private interest
- Distribution constraints
- Corporate governance
- Reporting requirements

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<sup>2</sup> Ontario Government (2013) *Impact A Social Enterprise Strategy for Ontario* [Online] Available at: <https://dr6j45jk9xcmk.cloudfront.net/documents/697/impact-socialenterprise.pdf> [Accessed on 22 April 2014]

- Oversight

The sections describe the challenges that the Panel sought to address, and relevant background and contextual information. Under each issue, the options considered by the Panel are described as well as the recommendations developed by the Panel. The rationale for each recommendation is also included, and so are the considerations regarding implementation.

### 1.3 The social enterprise stakeholder Panel

The 14 members of the Social Enterprise Stakeholder Panel were drawn from a wide range of interests and expertise including social entrepreneurs, impact investors, representatives from the not-for-profit sector and lawyers.

**Table 1: Social Enterprise Panel Members**

Panel Member	Position and Organization
Terrance Carter	Managing Partner, Carters Professional Corporation
Lynn Eakin	Policy Advisor, Ontario Nonprofit Network
Linda Godel	Lawyer, Torkin Manes LLP, Not-for-profit and charitable organizations practice
Allyson Hewitt	Senior Fellow, Social Innovation and Director, SiG@MaRS
Scott Kaplanis	Partner, Epic Capital
Teri Kirk	Founder, The Funding Portal
Bernie Li	Co-founder and Vice President, Pure Energies
Susan Manwaring	Partner, Miller Thomson LLP, Chair of OBA Charity Section
Don McCreesh	Chair of Standards Council, Imagine Canada
Magnus Sandberg	Vice President and General Manager, Social Capital Partners
David Stevens	Partner, Gowlings LLP, Corporate Tax practice including charities and personal tax planning
Tonya Surman	Executive Director, Centre for Social Innovation
Norm Tasevski	Co-Founder and Partner, Purpose Capital
Kevin West	Founder, SkyLaw Professional Corporation

The Panel was guided by its Terms of Reference, which set out the scope of the Panel's work, the roles and responsibilities of Panel members (as well as those of the Ministry and Deloitte) and the Panel process. Deloitte was engaged to facilitate Panel meeting discussions and document the key items of discussion, consult expert stakeholders to support Panel discussions, and draft the Panel report. The Terms of Reference also defined the responsibilities of Panel members as part of an open government approach to public engagement. These responsibilities included considering the public interest rather than

advancing a particular advocacy position and striving for consensus in making recommendations to government. The full Terms of Reference can be found in Appendix A.

The Panel met on six occasions from mid-February to late April 2014. Panel members were provided with packages of background research prior to each meeting. The research materials were prepared by Deloitte based on publically available information on dual purpose corporate structures in other jurisdictions in Canada, the UK and the United States, as well as the field of social enterprise in Ontario. The research materials were designed to initiate and stimulate conversations among Panel members and stimulate debate. Panel members also benefitted from each other's experience and knowledge, sharing information and research both during and between Panel meetings.

Deloitte also undertook consultations with a number of subject matter experts with relevant expertise and experience from across the province and in multiple jurisdictions with dual purpose corporate structure legislation. The information gathered was shared with Panel members to broaden and inform Panel meeting discussion. A list of the experts consulted can be found in Appendix B.

## 2. Current state and key trends in the field of social enterprise

### 2.1 Current state of the field of social enterprise

The field of social enterprise is dynamic and complex, and still developing its own terminology. Even the definition of “social enterprise” is the subject of robust debate. Generally, a social enterprise is a corporate entity that exists primarily to promote public benefit. Social enterprises use business strategies to maximize social impact, build social and financial capital, and offer innovative ways of operating for social and / or environmental purposes.

The field of social enterprise is also evolving as social attitudes shift, technology enables a more collaborative economy, problem solvers approach challenges with new ideas, and more sophisticated capital markets for social investment develop and expand. These trends are influencing a new approach to social innovation that goes beyond what was traditionally considered the domain of the charitable and not-for-profit sector. Interest in social business is accelerating. This vibrant and developing area is sometimes referred to as the “impact economy”.

Social enterprises can take many forms, including associations, sole proprietorships, partnerships, co-operatives or corporations. Social enterprises can also have many different objectives, including health, environmental, cultural or educational. For example, a social enterprise could provide recycling services for a local community. A social enterprise could also create a business as a means to accomplish a related social objective, such as the employment of homeless people in collecting recyclables. Estimates cited in the government’s Social Enterprise Strategy indicate there are already approximately 10,000 social enterprises in the province employing 160,000 people and serving 3.4 million customers each year.<sup>3</sup>

Ontario has sponsored research in this area since 2007, and the Office for Social Enterprise was established in May 2013. Other provinces (British Columbia and Nova Scotia) have already passed new dual purpose corporate structure legislation following the lead of other jurisdictions such as the United Kingdom.

The mandate of the Panel was to explore the potential for “dual purpose” corporate structure legislation: for organizations with a social/environmental purpose and a for-profit intent. The “dual purpose” corporate legislation described in this report is intended to support and enable those for-profit corporations seeking multiple bottom lines.

While the Panel focused on for-profit social purpose businesses, it supports the entire field of social enterprise, including charities, not-for-profits and co-operatives. Any policy decision regarding one subset

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<sup>3</sup> Ontario Government (2013) Impact A Social Enterprise Strategy for Ontario [Online] Available at: <https://dr6j45jk9xcmk.cloudfront.net/documents/697/impact-socialenterprise.pdf> [Accessed on 4 February 2014]

of these organizations must be carefully considered so that it does not negatively impact others. In particular, if the government were to consider financial incentives in the future, it should incorporate appropriate stakeholder consultation with relevant sector participants. Any financial supports should be considered for the entire spectrum of social enterprises.

In addition, there are a wide range of supports that are important to promote and enhance the field of social enterprise. Dual purpose corporate structure legislation on its own would not be sufficient to make Ontario the leading jurisdiction in North America for social enterprises.

## 2.2 Challenges facing the field of social enterprise that can be addressed by dual purpose corporate structure legislation

Social enterprises in Ontario can already use a variety of corporate structures depending on the particular needs and interests of their business model. In Ontario, options include:

- The *Business Corporations Act* (OBCA). The OBCA governs for-profit businesses;
- The *Corporations Act*, which will be replaced by the *Not-For-Profit Corporations Act* (ONCA), when proclaimed. Although not yet in force, the ONCA will govern not-for-profit corporations. If any of the purposes are of a commercial nature, the articles (which are publicly available) must state that the commercial purpose is intended only to advance or support one or more of the not-for-profit purposes of the corporation; and
- The *Co-operative Corporations Act*. A co-operative gives each member or delegate only one vote and must provide a majority of its services to its members.

None of these corporate structures enable a dual purpose for-profit social enterprise. Not-for-profit corporations cannot issue shares or distribute dividends, and therefore cannot attract equity investment. In addition, while many not-for-profit organizations and charities are seeking to diversify their revenues, there is increasing confusion about how to achieve diversification while maintaining not-for-profit status.

For-profit corporations can face the opposite problem – they can pay dividends, but may not be able to assure social investors that investments will be used for social purposes. Alternatively, a for-profit corporation may have difficulty maintaining its social mission if investors' goals change. Shareholders and certain other stakeholders are permitted to pursue legal remedies if they feel the directors are not acting in the corporation's best interests or if their own interests have been unfairly disregarded. These interests can create a natural pressure in favour of prioritizing a financial return that may come into conflict with the social mission of the organization.

Hybrid legislation could protect the social mission of an organization, attract greater investment, and lower the overall cost – in time, effort and financial resources – of organizing and operating these for-profit social mission businesses. In addition, as other jurisdictions move forward with hybrid corporate legislation, new legislation in Ontario would help local corporations compete globally for impact investment dollars.

### Facilitate access to capital

The availability of capital from impact investing is growing rapidly as the idea is introduced to investors. For instance, in 2010 the Canadian Task Force on Social Finance estimated that \$100 million was being invested by foundations in mission related investments.<sup>4</sup> A more recent estimate from the MaRS Centre

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<sup>4</sup> Canadian Task Force on Social Finance (2010) Mobilizing Private Capital for Public Good. (Online) Available at <http://www.marsdd.com/app/uploads/2011/02/MaRSReport-socialfinance-taskforce.pdf> [Accessed on 13 May 2014]

for Impact Investing of the total value of impact investments (investments intended to create positive impact beyond financial returns) under management in Canada is \$2.1 billion.<sup>5</sup> A recently released annual impact investor survey conducted by JP Morgan and the Global Impact Investing Network polled fund managers, foundations and other impact investors.<sup>6</sup> The sixty-three participants who responded in both 2013 and 2014 reported a 10% growth in capital committed between 2012 and 2013 and a 20% growth in the number of deals. According to a 2010 report by JP Morgan and the Rockefeller Foundation, globally, the impact investment marketplace could grow to \$1 trillion by 2020.<sup>7</sup>

Panel members believe that the emergent world of impact investing presents an opportunity for Ontario to unlock more capital to solve society's complex, intractable social challenges. Individuals and institutions with capital to invest are seeking corporations that can demonstrate a social mission that is fundamental and protected by the corporation, while still allowing the potential for profit. Corporations that can provide assurances about their double bottom line, and jurisdictions that can brand their dual purpose corporations have a significant opportunity to mobilize private capital for public good.

A new corporate structure could enable organizations to more easily provide assurance to investors looking for social and financial value. While there are multiple corporate structures being used to achieve social purpose outcomes, the overall objective for dual purpose corporate structure legislation is to create a more efficient way of establishing and enabling for-profit corporations focused on social impact.

## **Protecting the social mission**

A new corporate structure could facilitate the protection of social mission by enshrining the social purpose into the corporation's articles. A formal legal structure would make it clear what the corporation is aiming to achieve and the rules it must follow. Once an organization is set up within this construct it would have a durable and resilient social purpose that is transparent to investors and the public. Directors would be required to consider the social purpose when making decisions. If the legislation includes a distribution constraint (discussed below), founders could be more comfortable reducing the amount of their involvement in the corporation over time knowing that the assets would not be inappropriately diverted from the social purpose.

## **Enable equity for founders**

A new corporate structure could facilitate a founder's access to equity. Founders invest significant time and energy in the corporation, protect its social purpose, and may want to share in any financial success. Once founders are no longer active in an organization, they could cash out any shares while still feeling confident that the social purpose of the corporation would be protected.

**Recommendation 1. Dual purpose: Any proposed legislation should create a new form of share capital corporation with a dual purpose that includes a mandated social purpose. Proposed legislation should allow organizations to pursue profit-making activity as long as the necessary portion of profits/assets/revenue is directed towards its social purpose.**

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<sup>5</sup> MaRS Centre for Impact Investing and Purpose Capital (2014) State of the nation: Impact investing in Canada. (Online) Available at <http://www.marsdd.com/wp-content/uploads/2014/03/Impact-Investing-in-Canada-State-of-the-Nation-2014.pdf> [Accessed on 21 April 2014]

<sup>6</sup> JP Morgan (2014). Spotlight on the Market: The Impact Investor Survey. (Online) Available at: [http://www.jpmorganchase.com/corporate/socialfinance/document/Spotlight\\_on\\_the\\_Market.pdf](http://www.jpmorganchase.com/corporate/socialfinance/document/Spotlight_on_the_Market.pdf) [Accessed on 13 May 2014]

<sup>7</sup> O'Donohoe, N., Leijonhufvud, C. and Saltuk, Y. (2010) Impact Investments An emerging asset class. JP Morgan (Online) Available at: <http://www.rockefellerfoundation.org/uploads/files/2b053b2b-8feb-46ea-adbd-f89068d59785-impact.pdf> [Accessed on 21 April 2014]

**Recommendation 2. Equity:** Any proposed legislation should enable dual purpose corporations to attract share capital from investors seeking both a financial and a social return. It should also enable founders, employees and other stakeholders to have equity in the organization.

**Recommendation 3. Support for all social enterprise:** Any proposed legislation should complement existing legislation used for social enterprises and the government should support the full spectrum of social enterprise including for-profits, not-for-profits, charities and co-operatives. A new corporate structure should not negatively impact existing social enterprises. Proposed legislation should allow social enterprises to incorporate under the legislation to which they are best suited by providing, where appropriate, provisions to allow organizations to continue into other corporate structures.

# 3. Dual purpose corporate structure legislation

## 3.1 Guiding principles for legislative design

In order to help set guiding principles and identify options for legislation, as well as to consider the advantages and challenges of each issue, the Panel developed a set of key priorities and a legislative framework.

### Key priorities

In designing dual purpose corporate structure legislation, it is important to consider the interests of all affected stakeholders. Key financial stakeholders include:

- Social entrepreneurs seeking to create for-profit corporations with a demonstrated social purpose, and seeking to assure investors and funders that investments are targeted to those stated social purposes/outcomes; and
- Investors and funders (including individuals and institutions) seeking assurances that investments are targeted to social purposes and provide satisfactory returns.

Other stakeholders include employees, consumers who make a conscious choice to support particular social purposes through the products and services that they purchase, and communities that receive benefits from the social purpose business. Recommendations for legislation are intended to balance the private financial interest with supporting the public good.

The legislation should provide a corporate structure appropriate to all stages of the corporate life cycle, including a clear, fast and cost-effective process for incorporating. The legislation should also seek an efficient and administratively simple process for converting from an existing corporate structure to a new dual purpose corporate structure.

As with other corporate structures, dual purpose corporations will likely have a wide variety of sizes and degrees of sophistication. The legislation should support the scaling of social impact, and limit the disproportionate impact of regulation on small organizations. In particular, the legislation should include thresholds for reporting and governance requirements. A threshold approach could reduce compliance costs and make it easier for early stage entrepreneurs and small businesses to use the legislation.

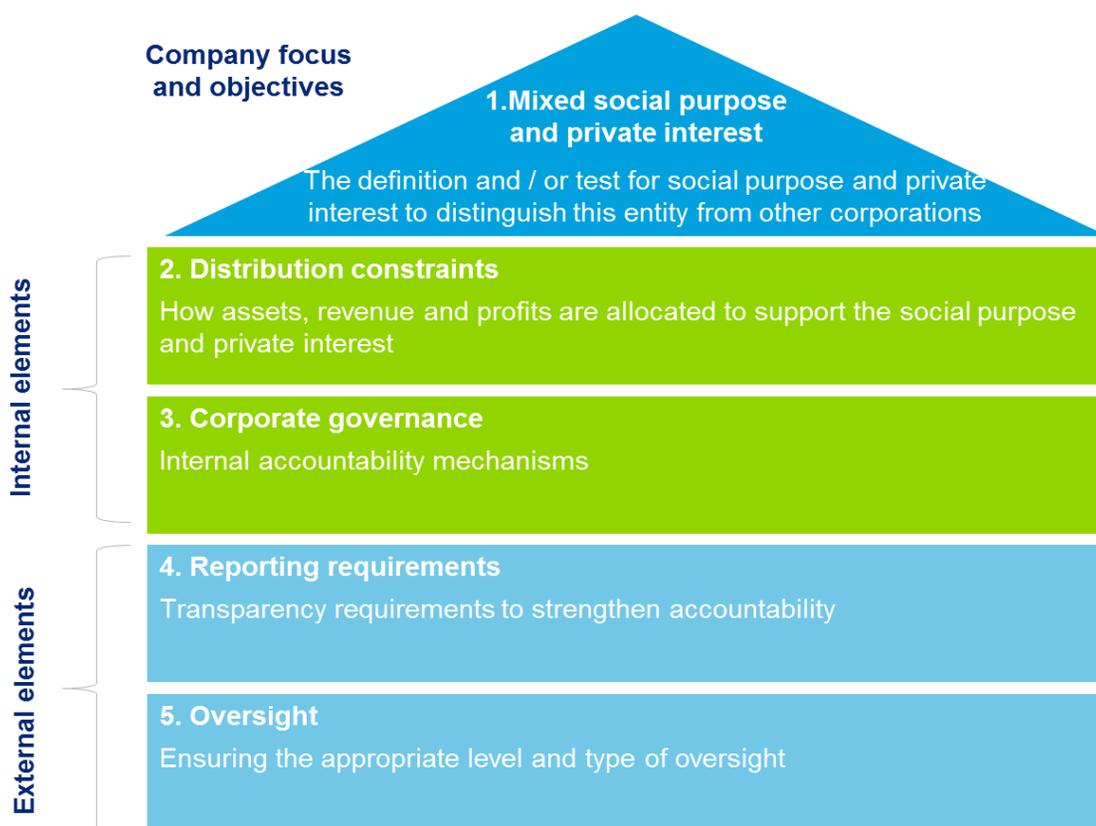
To the extent possible, legislation should facilitate the potential for future public investment in this corporate structure. There are a range of ways of leveraging public investment including grants and contributions, procurement, and indirect support via tax incentives. For example, the Government of Quebec recently introduced the Social Economy Act, which requires public sector organizations to take

the social economy into consideration in existing and future policy and programs.<sup>8</sup> The UK has introduced a social finance tax credit providing tax relief for investments in qualified entities.<sup>9</sup> At some point in the future, governments may be interested in similar financial incentives for entities in Ontario or federally. Dual purpose corporate structure legislation should allow for potential future public investment.

## Legislative framework

In order to help identify options and consider the advantages and challenges of each issue, the Panel developed a legislative framework. The framework provided structure to discussions by grouping the issues into key topics, and identifying the links between them. These topics, set out in the figure below, and in subsequent sections of the report include: the assessment of whether a corporation has a social purpose and the ability to pursue a private financial interest, distribution constraints, corporate governance, reporting requirements, and oversight.

**Figure 1: Legislative Framework**



The framework is based on obligations recognized in corporate law which require fiduciaries (e.g., directors and officers) to perform his/her duties with loyalty and competence. The “duty of loyalty” requires that the fiduciary perform his/her obligations loyally, honestly and in good faith, while avoiding conflicts of interest. The “duty of competence” requires the fiduciary to exercise their obligations using a reasonable

<sup>8</sup> Canadian Community Economic Development Network (2013) Social Economy Act Introduced in Quebec [Online] Available at: <https://ccednet-rcdec.ca/en/node/11761> [Accessed on 23 April 2014]

<sup>9</sup> Big Society Capital (2014) Budget 2014: What do we know about the social investment tax relief? [Online] Available at: <http://www.bigsocietycapital.com/blog/budget-2014-what-do-we-know-about-social-investment-tax-relief> [Accessed on 23 April 2014]

level of skill. For example, the fiduciary must review reports, attend meetings, and carry out other required functions.

Any legislative requirements should be considered both individually and in the aggregate to ensure they form a coherent whole. For example, if the legislation includes limited reporting requirements or limited distribution constraints there may be a need for expanded governance requirements, or vice versa.

Legislation should strike a balance between providing appropriate flexibility and scope for organizations seeking to adopt a dual purpose and suitable boundaries to protect the social purpose and ensure effective governance. These boundaries would help to develop a recognizable brand and assure investors and the public of the corporation's commitment to its social purpose notwithstanding its for-profit status.

### **Design Principles**

- **Legislation should support the interests of all key stakeholders, including social entrepreneurs and organizations incorporating under the legislation, investors, and communities with an interest in the public benefit the corporation seeks to further.**
- **Legislation should deliver assurance to entrepreneurs, investors and the public that the organization will be focused on a mandated social purpose as well as private financial interests.**
- **Legislation should include the minimum necessary regulation and oversight of the social purpose and financial obligations of the corporation to protect against misuse of the dual purpose corporate structure.**
- **Legislation should balance the need for flexibility and commercial focus with the protection of the social purpose.**

## **3.2 Mixed social purpose and private interest**

The combination of a defined social purpose and private financial interest is a key distinguishing feature of this corporate structure. For-profit status is essential to enable private financial interests. A corporation could earn a profit from a commercial purpose based on the parameters outlined in the OBCA, i.e., allow shares to be freely transferable, ownership interest to be sold, employees to own shares in the corporation and be granted stock options.

The panel considered whether the legislation should specify that the social purpose should be integral to the activities of the corporation (e.g., a business that employs disadvantaged youth) or whether it would be sufficient to require that profits be destined or dedicated to a social purpose (e.g., using profits of a coffee shop to fund a program for disadvantaged youth). While a more flexible definition that allows any profit making activity with a destination requirement could allow for more innovation in pursuit of social impact, it could also create a potential for abuse. This may result in a situation where the focus of a dual purpose corporation is predominantly on the profit-making activity as opposed to delivering social impact. In this regard, it might be difficult for a regulator, owners or other stakeholders to detect and act to prevent abuse. This type of abuse could be damaging to the reputation of all organizations incorporated under the legislation. To reduce this risk of abuse, the role of the regulator may need to become more robust than what would be required for dual purpose corporation legislation that is more tightly defined (i.e., where the social purpose of the organization is required to be integral).

Existing dual purpose corporate structure legislation (enabling community interest or community contribution companies) in British Columbia, Nova Scotia and the United Kingdom implicitly allows for a

variety of profit making activities. The provision of the activities could be considered a social objective (integral) or the financial results of the activity could be used to accomplish a related social objective (destined). Several Panel members were concerned about the potential for abuse with non-integral social purposes. While some felt this risk could be balanced by the existence of a regulator, as is done in the UK, other Panel members remained concerned about the impact of a definition that is too broad, such as a reasonable person test since it is vague and therefore could lead to arbitrary decision making by the regulator. This in turn could result in a lack of clarity and certainty in the implementation and oversight of dual purpose corporations.

An independent assessment of the social purpose could be performed by a regulator using a “reasonable person standard” modeled on the UK community interest test (i.e., would a reasonable person consider that its activities are carried out for the benefit of the community). Alternatively, a “bright line test”, in which an organization must meet a predefined set of criteria, could be used. A bright line test can provide greater certainty and support the development of a brand, especially initially as it does not require a regulator to interpret the “reasonableness test”. However, it might limit the innovation of social entrepreneurs depending on how narrowly the term is defined and is not as easy to change to be responsive to new developments in society and the marketplace.

With either social purpose test, the organization would be required to include a statement of its social purposes in its articles. The statement should include a description of the activity(ies) being undertaken and how each is intended to benefit the community.

In order to make the legislation responsive to the potential abuse of the social purpose which may arise, the Panel discussed the inclusion of powers to limit the definition of social purpose, as needed. For example, if it turned out that dual purpose corporations were adopting inappropriate purposes, these could be restricted. This would provide greater assurance to key stakeholders that organizations operating under this legislation are compliant with its intent. While there was a general consensus of panel members that profits be destined or dedicated to a social purpose with oversight provided by a regulator, a minority view expressed a preference that the business activities should be made integral to the social purpose.

**Recommendation 4. Articles of incorporation: Any proposed legislation should require the organization to have a statement of its social purpose in its articles. The statement should include the activity(ies) being pursued and / or outcome(s) sought.**

**Recommendation 5. Definition of social purpose: Any proposed legislation should use either a “reasonable person test” or define social purpose (e.g., a purpose that is beneficial to society or a segment of society beyond just shareholders, directors or other persons related to the company). The legislation should include a process to allow the definition to be modified over time, as required.**

### **3.3 Distribution constraints**

Distribution constraints are intended to ensure that revenue, assets and profits are appropriately allocated to the social purpose and the private financial interest. The panel considered three main options for the corporate structure’s distribution constraint, each with advantages and challenges: no distribution constraints; distribution constraints based on a fixed percentage of assets/revenue (similar to the legislation in BC, NS and the UK); and distribution constraints based on restricted funds. The Panel

agreed on the need for a distribution constraint within the legislative model, but had varying views regarding the form.

The Panel would like to see some type of distribution constraint mechanism to ensure the corporation's resources are used to further its social purpose, as well as available, to some degree, for profit making.

Any consideration of a legislative requirement for a distribution constraint must include an examination of all of the ways in which value can be removed from the corporation. This value could include dividends to shareholders, transfers of assets at less than fair market value, compensation and bonuses that are above market rates, and the distribution of assets on dissolution.

Distribution constraints could impact the ability of these organizations to raise capital and be competitive in the capital marketplace. Given the potential impact, the constraints must be considered carefully. Options include:

- No distribution constraints
- Distribution constraints based on a percentage of assets/revenue
- Flexible distribution constraints

## **No distribution constraints**

This option involves the adoption of a stated social purpose and a requirement that directors consider both the social purpose and the financial interest of the corporation when making decisions. The legislation would not include any limitations on what the corporation can do with revenue, assets and / or profits. Other legislative requirements would continue to apply, including those related to reporting and corporate governance, as discussed below. Shareholders and other parties with a financial interest in the organization would provide oversight, through private enforcement and the pursuit of available remedies, to ensure the organization pursues both its social purpose and financial interests.

There are a variety of advantages with this model. It is simple to implement and easy to understand, with no major restrictions on organizations and limited cost to government. However, the Panel agreed that this option should not be recommended. The Panel's preference is for any legislation introduced to enable mission-driven organizations. Legislation without any distribution constraint would not provide sufficient protection for an organization's social purposes, and there would be significant risk that assets/revenues would not be utilized for public good. Insufficient protection of the organizations' social purpose would raise the risk of abuse. It also would not provide assurance when trying to raise funds for the social purpose. Ultimately, it would not support a strong brand in Ontario.

This model is similar to the legal structure of an OBCA corporation with a strong commitment to corporate social responsibility and / or a shareholder's agreement directing the corporation to pursue a social purpose. It would not provide significant benefits over and above what is possible under the OBCA.

## **Distribution constraints based on a percentage of assets/revenue**

This option requires assets to be substantially retained within the corporation and used for the purposes for which the corporation was formed. If the assets are transferred out of the corporation, they would be required to be transferred at market value. In addition, a distribution of the assets must satisfy requirements based on fixed percentages (for example: "upon dissolution x% of assets are distributed to other asset locked bodies"; or "y% of profits need to be directed back in to the corporation"). British Columbia's legislation allows up to 40% of any profits to be shared with investors, with 60% reinvested in

the corporation. There are no dividend limits on shares held by qualified entities, which include charitable organizations or other asset-locked entities.

One of the main advantages with this model is that the rules are conceptually straightforward and therefore potentially more understandable to both investors and the general public. In addition, this approach would ensure a level of harmonization with existing legislation in British Columbia and Nova Scotia and create clear boundaries for corporations operating under this structure.

The main challenge with this model is that it artificially restricts the corporation's revenues and assets. It is potentially less flexible for commercial activities supporting social purposes and potentially less appealing to investors. A more flexible variation on this approach is to allow the corporation to define its own distribution constraints, subject to a minimum. Corporations could use defined distribution constraints to compete for investment as it may be seen as a differentiator in the impact investment marketplace. The Panel considered variations to this approach, including:

- The corporation could opt-in to the distribution constraint at the time of its choosing; or
- The corporation could automatically be subject to distribution constraints once it reached a certain level of maturity (defined for example based on revenue levels).

## **Flexible distribution constraints**

This model enables a corporation to voluntarily adopt distribution constraints in order to attract a full range of capital investment. Key sources of capital could include grants, loans bearing no interest or a rate of interest that is below the average cost sometimes referred to as "concessionary" debt and equity, or could include market-rate debt and equity. Depending on the capital involved the organization could institute distribution constraints as required for specific investments.

Corporations under this option would be given the choice of opting to have distribution constraints on some or all of their funds. This would allow different organizations to have different distribution constraints, customized to the particular needs of each organization. The legislation would provide a framework for imposing these constraints to make it easy to adopt, and to be customized for individual organizations. It would also need to provide sufficient consistency so that the framework is understood by investors and other stakeholders.

Compared to the distribution constraint based on a percentage of assets/revenue approach, this model may be more responsive to a corporation's needs since it allows a corporation to tailor investments to desired social outcomes and is amenable to both small scale and large scale investments. In addition, the model would assist corporations that raise funds for a specified project as well as corporations seeking funding of business operations to achieve a social purpose.

However, this approach is not harmonized with the legislation in other jurisdictions and its flexibility may create inconsistent approaches to implementation. Moreover, there is the potential for an organization to "free-ride" as it operates within this structure with few or no assets in its restricted funds category and while still benefiting from its association with a social purpose brand. It may also be difficult for unsophisticated investors to understand.

This model may also be more administratively complex for the organization itself to administer. There is also concern that this type of structure is not amenable to facilitating possible public investment as it may be difficult to monitor.

**Recommendation 6. Distribution constraints: Any proposed legislation should establish distribution constraints on assets/profits to protect the organization's social purpose and help develop a brand to attract impact investors and consumers. Distribution constraints should still allow the organization to share some portion of its profits with investors.**

### 3.4 Corporate governance

The key priority for corporate governance is to establish appropriate internal accountability for decision making by directors of the organization. The issues were considered based on industry best practices, assessment of proportionality (balancing the restriction imposed against the impact on the corporation) and overall effectiveness.

#### **Director roles and responsibilities**

The Panel considered a range of director roles and responsibilities. In order to embed the dual purpose into decision-making, and provide clarity regarding directors' fiduciary duties, the legislation should include a statement requiring directors to consider the dual purpose. In addition, any proposed legislation should impose at least the same standards and duties on directors as the OBCA including regarding conflicts of interest, loyalty and competence.

Organizations should have a minimum number of directors (e.g. 3) in order to support corporate accountability, balance the focus on for-profit and social purpose considerations, promote multiple perspectives and encourage more balanced decision-making. This requirement is consistent with other corporate legislation in Ontario but the Panel noted that consideration should be given to the disproportionate burden that this requirement could place on smaller, early stage organizations.

The Panel considered whether there should be at least one director who is independent and represents the social purpose. While an independent director could foster greater accountability to the social purpose, it could be difficult in practice and could create management challenges (such as disputes on the board) and reduce investor interest. It is better practice to require each director to consider all of the purposes of the corporation when exercising his or her duty to act in the best interests of the corporation.

The Panel considered whether directors should be prohibited from receiving any salary or other benefit from the corporation. In principle, the Panel feels that directors should not be restricted from receiving compensation as this could limit the ability to attract qualified directors. The Panel noted that restrictions on compensation could strengthen the focus on public benefit and reduce the focus on private financial interests. Therefore, directors should be subject to strict conflict of interest rules, and the ways in which directors can receive compensation will need to be considered as part of distribution constraints.

Directors should be responsible for approving a mandatory annual social benefit report. The director oversight of the report would support the profile of and focus on the social purpose of the corporation.

#### **Shareholder rights**

The Panel considered a range of shareholder rights. Shareholder approval for fundamental changes (such as changing the social purposes of the corporation) should be required using a typical two-thirds majority rule and there should be a right of dissent for shareholders who oppose certain fundamental changes that are approved. These requirements would help ensure the organization does not change its social purpose without significant shareholder support.

The Panel considered the requirement for a minimum number of shareholders. On balance it found that although this requirement may reduce the control of individual shareholders, it could create unnecessary restrictions, particularly on early stage businesses, and should not be implemented.

Differential voting for different classes of shares should be allowed. This differentiation could provide flexibility to prioritize certain types of investment. It also could encourage investor interest by giving a degree of control to investors.

**Recommendation 7. Director responsibilities: Any proposed legislation should require directors to consider the organization’s social purpose. It should also require a minimum number of directors. Directors should not be restricted from receiving compensation.**

**Recommendation 8. Shareholder rights: Any proposed legislation should have the same requirements as Ontario’s Business Corporations Act (OBCA) regarding shareholder approval (two-thirds of the votes cast at a meeting or 100% approval in writing) for fundamental changes, contain a right of dissent for shareholders for certain fundamental changes, and provide similar rights of shareholders, creditors and other stakeholders as under the OBCA to bring claims for grievances.**

### 3.5 Reporting requirements

Reporting is designed to strengthen accountability to shareholders, and potentially to other stakeholders interested in the organization’s pursuit of its social purpose (e.g., beneficiaries of the social purpose). If the report is publicly available, it would allow for greater scrutiny of activity and be consistent with approaches in British Columbia and Nova Scotia.

Jurisdictions with dual purpose corporate legislation typically require organizations to produce an annual report describing the activities pursued to benefit society or which advanced the organization’s social purposes (a social benefit report). These social benefit reports are often required to include certain financial information such as dividends distributed, the identity of recipients, the unused dividend amounts and details on any transfers of assets. Some reports must also include information on consultation undertaken with the organization’s stakeholders and levels of remuneration within the organization.

The Panel explored a number of features for reporting requirements. The Panel considered requirements related to the initial disclosure of the social purpose and the approach for reporting on progress. While there was consensus that the social purpose should be disclosed in the organization’s articles (similar to requirements in the Corporations Act and ONCA, once it is in force), there was a wide range of views on what type of report should be completed to describe the company’s progress in relation to the social purpose.

The Panel considered several ways the social benefit could be reported. Panelists held mixed views on whether the report should be a more general description of the organization’s social purpose activities, or a more specific assessment, potentially completed as an independent “third-party” assessment. The Panel also considered the merits of a requirement to report on activities versus outcomes. It was noted

that given the diversity of social purposes that it would be difficult to impose a specific measurement methodology such as “social return on investment”.<sup>10</sup>

The Panel considered the merits of requiring the disclosure of basic information, while leaving the extent of disclosure up to individual organizations and supported by an independent body (similar to a professional association). This independent body could help set standards, develop guidelines and highlight best practices. Although views were mixed, there was greater consensus that an annual report should be completed by the organization with directors responsible to the shareholders for its content.

The approval of the financial statements should, at a minimum, follow a similar approach to the OBCA in which the board is required to approve the financial statements, and the financial statements are provided to the shareholders.

The Panel also discussed public disclosure of financial information. It was agreed that disclosure of information related to transfers of assets and dividends was appropriate if an asset lock and dividend cap are in place as distribution constraints. The Panel considered whether stakeholders can properly scrutinize the public benefit commitment without the disclosure of financial statements. It was noted that the social benefit report should include (alongside a description of the activities that furthered the corporation’s social purpose) enough financial information to demonstrate the social purpose is being achieved and the obligations associated with the distribution constraints are being met.

Panelists noted that the disclosure of certain types of financial information could put the organization at a competitive disadvantage. In addition, reporting of remuneration was unlikely to generate benefits and could encourage salaries that were not aligned with market realities.

The Panel also considered threshold requirements to prevent regulatory burdens on small organizations. While there should not be a threshold for reporting on the social purpose, requirements regarding financial statements could be dependent on the size of the organization. For example, if there is a need for financial statements to be assessed, given the associated cost and complexity, this requirement should be introduced only for certain types of organizations (e.g., for organizations with a certain amount of revenue or above a certain number of employees).

**Recommendation 9. Annual social benefit and financial reporting: Any proposed legislation should require organizations to report annually on the organization’s activities and outcomes aimed at its social purpose (a social benefit report) and include enough financial information to demonstrate that the financial obligations associated with the distribution constraints are being met.**

**Recommendation 10. Administrative proportionality: Reporting requirements under any proposed legislation should be streamlined to include only those elements necessary to achieve transparency objectives.**

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<sup>10</sup> For a discussion of measurement methodologies, see Guidebook for Impact Investors: Impact Measurement. Purpose Capital, February 2013. Available at <http://www.purposecap.com/wp-content/uploads/Guidebook-for-Impact-Investors-Impact-Measurement.pdf>

**Recommendation 11. Reporting transparency: Any proposed legislation should require the directors to approve the social benefit report. The report should be provided to the shareholders, and be publicly accessible.**

**Recommendation 12. Financial statements: Any proposed legislation should require that financial statements be approved by the directors and sent to shareholders.**

### 3.6 Oversight

A regulator could review eligibility, monitor compliance, investigate complaints, and / or perform a capacity building role. These roles could be performed by an existing or new government agency, or by a non-governmental body (such as a professional association). The Panel considered a spectrum of options for the role of a regulator: from a light touch to an activist regulator. The Panel supported an approach that balanced the regulator's capacity to provide assurance and foster credibility in these organizations while also encouraging flexibility, and minimizing compliance costs.

#### Function

Under the OBCA, the Minister of Government Services appoints a "Director" to oversee certain regulatory functions. The Director's responsibilities include endorsing a corrected certificate where there is an error, making inquiries regarding compliance with the OBCA, prescribing forms and providing for their use, and issuing an order to dissolve a corporation not in compliance with specific acts. Any proposed new dual purpose corporate legislation should include, at a minimum, the same regulatory functions, duties and powers as the Director under the OBCA.

Legislation in Nova Scotia and the UK provides a role for a public regulator to review eligibility, referred to as a "gatekeeper". The regulator reviews the registration documents – including a social purpose statement (describing the activities and mandate for the benefit of the community) set out in articles of incorporation.

British Columbia's legislation does not provide for a regulator. BC's Community Contribution Companies incorporate using the provincial corporate registry with an automated incorporation and filing system. This approach minimizes regulatory oversight and compliance costs, but risks abuse from companies seeking a 'social purpose' brand, without a bona fide social mission. The BC legislation includes stronger internal governance requirements and relies on private enforcement to safeguard against misuse.

A regulator could also monitor compliance and investigate complaints on an ongoing basis. In the UK (with an independent regulatory function), the regulator reviews annual reports and undertakes compliance reviews. The regulator is able to investigate complaints and has the power to appoint auditors, examine accounts, bring civil proceedings, appoint/remove directors, etc. A regulator with this kind of authority provides a strong preventive force against misuse of the corporate status, but also raises concerns of regulatory burden for organizations. The Panel noted that tighter regulation would likely be more important if public investment (through social finance tax incentives or otherwise) are contemplated in the future.

The Panel recommended a simple oversight framework that provides flexibility to introduce more detailed regulation if and when required. However, from the outset, there would be significant advantages from a supportive and enabling approach in order to build support and momentum for the corporate structure. It is important to ensure that a regulator does not stifle innovation, or impede investment in these organizations, while still maintaining effective regulatory oversight.

Some jurisdictions have adopted a more flexible approach during the early years of dual purpose corporate structure legislation, allowing government to respond with changes as required. Similarly, although the British Columbia model does not create a government regulator, its regulations allow for limitations to be introduced if corporations were adopting inappropriate purposes.<sup>11</sup>

The main advantages of a regulatory body are that it provides independent oversight to help establish stronger credibility, can respond more quickly and with greater flexibility to new opportunities and challenges, and can support new entrepreneurs in establishing new social purpose businesses. In contrast, it can also create additional compliance costs for business and has the potential to stifle innovation if its actions are overly restrictive.

The government could also perform advocacy and capacity building activities related to the dual purpose corporate structure and for all organizations in the field of social enterprise. This could include a range of activity from providing assistance to social entrepreneurs considering incorporation to raising awareness within the broader community to support investment and consumer understanding.

## Form

If a regulator is introduced it could be based in an existing government organization or it could be established as a new agency. Alternatively, the regulator could be established as a non-governmental body, such as a professional association.

The UK has an independent public regulator overseeing approximately 9,000 CICs with an annual expenditure of approximately \$500,000.<sup>12</sup> This Regulator reports to the Department of Business, Innovation and Skills and is responsible for reviewing eligibility, monitoring compliance, investigating complaints and performing advocacy.

As with other corporate registrations, some form of cost recovery should be considered. In other jurisdictions, these costs are in line with a business registration fee. For example, British Columbia charges fees of \$31.50 for name approval and \$351.50 for incorporation.<sup>13</sup> In the UK, organizations seeking to incorporate as CICs pay £20 for incorporation (as do all corporations), and the regulator charges an additional £15 fee for reviewing and approving documents for CIC status.<sup>14</sup>

**Recommendation 13. Flexible regulatory approach: Any proposed legislation should establish a framework for a basic regulator that provides flexibility and does not impede momentum for this new corporate structure to flourish. There should be a review process to develop more detailed regulation of the sector by a regulator if required.**

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<sup>11</sup> Ministry of Finance (2014) Questions and answers community contribution companies (C3s) [Online] Available at: <http://www.fin.gov.bc.ca/prs/ccc/caq.htm> [Accessed on 21 April 2014]

<sup>12</sup> UK Community Interest Company Regulator. Annual Report 2012/2013 (see expenditure table) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/243869/13-p117-community-interest-companies-annual-report-2012-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243869/13-p117-community-interest-companies-annual-report-2012-2013.pdf) [Accessed on 22 April 2014]

<sup>13</sup> Ip, M. (2013) How to Register a Community Contribution Company in B.C. Social Enterprise Buzz [Online] Available at: <http://www.socialenterprisebuzz.com/2013/07/30/how-to-register-a-community-contribution-company-in-b-c/> [Accessed on 22 April 2014]

<sup>14</sup> Office of the Regulator of Community Interest Companies (2014) [Online] Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211744/13-781-community-interest-companies-guidance-chapter-4-creating-a-cic.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211744/13-781-community-interest-companies-guidance-chapter-4-creating-a-cic.pdf). [Accessed on 22 April 2014]

**Recommendation 14. Regulator: A regulator should be established to approve and review eligibility, and manage the filing of annual social benefit reports. Any proposed legislation should enable cost recovery.**

## 4. Conclusion

The Panel's report to the Ministry is intended to inform the government's future decisions regarding potential new legislation for dual purpose corporations. The field of social enterprise is promising and inspiring. The opportunity to support social entrepreneurs starting new ventures for positive change, or to enable existing social purpose corporations to grow because they have enhanced access to capital is a welcome challenge. All Panel members support the opportunity to enable a behaviour change in investors, to foster the creativity of social entrepreneurs, and to provide options for organizations pursuing public good. Although Panel members sometimes differed on specific approaches to develop and implement dual purpose corporate structure legislation, the recommendations set out in this report reflect the best advice of the Panel on the issues.

The Panel was encouraged by the government's consideration of possible legislative and regulatory changes to help attract more private capital for social good. The Panel recognized that legislation would be one component of a multi-pronged approach to help the government make Ontario a leading jurisdiction in North America for social enterprise.

There is a new breed of social entrepreneur who is looking to achieve both a social and financial return. Although these social entrepreneurs can currently operate in either the current for-profit or not-for-profit arenas, neither of these corporate structures are designed for them or recognize their goal of a dual purpose. While a small number of panel members do not support the introduction of legislation, most panel members feel that new legislation could provide a clear and comprehensive set of rules to enable the creation of for-profit organizations with a mandated social purpose. Where it is properly implemented, legislation could protect the social mission of an organization, attract greater investment, and lower the overall cost of organizing and operating these dual purpose corporations.

The Panel hopes that the recommendations set out in this report will be carefully considered by government and shared with the public for their consideration and input.

**Recommendation 15. Public input: This report should be made available to the public to encourage broader input on the recommendations and considerations set out by the Panel.**

# Appendix A: Terms of reference

## **Social Enterprise Stakeholder Panel**

### **Terms of Reference**

#### **Social Enterprise Panel**

In September 2013, the Ontario government announced its Social Enterprise Strategy, including a commitment to “explore introducing legislation to enable the creation of new ‘hybrid’ corporations (for example, for-profit corporations that are dedicated to a social purpose, and required to re-invest a portion of profits into that social purpose)”.

In response to this commitment, the Ministry of Consumer Services (the “Ministry”) is establishing a Social Enterprise Panel to develop an independent Public Engagement and Recommendations Report on potential legislation to provide a new corporate structure for social enterprise corporations in Ontario.

The report will be used by the Ministry as the basis for broader consultation with the public and industry stakeholders and to inform future government decision-making. Deloitte has been engaged to facilitate Panel meetings and prepare the report on behalf of the Panel.

#### **Panel Meetings held between February and April 2014**

- February 12
- February 26
- March 19
- April 2
- April 16
- April 30

#### **Social Enterprise Panel Composition**

The Panel includes 14 members with expertise and interest in social enterprise corporate structure legislation. This includes lawyers (working with not-for-profit and for-profit organizations), social entrepreneurs, investors or funders, and experts from non-governmental organizations with a variety of professional and technical experience and expertise.

#### **Panel Member Responsibilities**

- Attend Panel meetings and provide input based on experience
- Work cooperatively with the meeting facilitator

- Review materials that may be distributed in advance of Panel meetings
- Engage and participate in Panel discussions
- Strive for consensus on recommendations to government
- Present their perspective in the public interest and not that of any association
- Maintain a respectful environment where all are welcome to share their views
- Contribute to the development of a findings and recommendations report that will be written by Deloitte

### **Deloitte's Responsibilities**

- Develop the Panel work plan, for the Panel's approval
- Prepare meeting agendas and materials
- Facilitate Panel meeting discussions and document the key items of discussion
- Engage expert stakeholders to support Panel discussions, as required
- Draft a findings report, including recommendations to government, based on Panel discussions and for the Panel's approval

### **Social Enterprise Panel Proceedings**

Guiding principles to develop the Findings and Recommendations Report with advice on potential legislation to provide a new corporate structure for social enterprise corporations in Ontario:

- Be reflective of stakeholder expertise and advice
- Be understandable to the general public
- Contain enough detail and rationale to provide a window into the Panel's deliberations
- Anticipate what would be acceptable to the public and government

Deloitte will prepare meeting agendas based on input from Panel members. Pre-meeting packages including background materials supplied by Panel members, Deloitte, the Ministry or other sources, will be distributed in advance of each Panel meeting. Deloitte will inform Panel members of any pre-meeting requirements such as research and readings.

The Panel may also seek additional support to assist with the Panel's deliberations from an informal pool of expert stakeholders from social enterprise and related sectors.

### **Public Service and Confidentiality**

Participation as a member of the Panel requires a commitment to the broader public interest. Panel members are expected to provide impartial advice for the benefit of all Ontarians, rather than necessarily advocating on behalf of any specific interest.

Panel members agree to share information and collaborate, while respecting each other's opinions, upholding the privacy of the discussions, and representing the views and interests of the people of Ontario.

The names of all Panel members will be included in the report and posted on the Ministry's website to ensure public transparency.

Meetings will be conducted under the Chatham House Rule:

- *When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.*

The Panel report will aim to achieve consensus on recommendations. Where consensus is not reached, the various points of view will be represented in the report, but not attributed to those who expressed them.

# Appendix B: Subject matter experts consulted

Deloitte met with a number of subject matter experts who provided important perspectives on the issues discussed in this report.

**Table 2: Experts consulted**

Panel Member	Position and Organization
Richard Bridge	Charity Lawyer in Nova Scotia
Sara Burgess	UK Community Interest Company Regulator
Hayley Clark	Director, Business Programs Service Nova Scotia & Municipal Relations, Government of Nova Scotia
Silvia Dorado	Visiting Professor, Waterloo Institute for Social Innovation and Resilience
Peter Elson	Senior Research Associate, Institute for Non-profit Studies, Mount Royal University
Aaron Emes	Partner, Tory's
Shelley McNellis	Director, Innovative Partnerships Ministry of Social Development and Social Innovation, British Columbia
Nancy Neamtan	Présidente-directrice générale, Chantier de l'économie sociale
Joyce Sou	Manager, B Corps and Social Impact Metrics, MaRS Centre for Impact Investing
Dennis Tobin	Partner, Blaney McMurtry
Erik Trojjan	Director of Policy, B Lab

