

Public Consultation

Business Law Modernization and Burden Reduction Council Recommendations to Modernize Ontario's Business Law Statutes

The Ontario Government is focused on ensuring Ontario has modern laws that facilitate a prosperous business climate and reduce burden on business.

To assist in developing recommendations on how to improve Ontario's business law statutes, the Ontario government has established a short-term advisory body called the Business Law Modernization and Burden Reduction Council (the Council). The Council's mandate is to make recommendations to government on how to modernize Ontario's corporate and commercial statutes to support the government's commitment to reduce burden on business and foster a good business climate in Ontario.

The Council has developed several recommendations that the Ministry of Government and Consumer Services is seeking public feedback on. The Ministry requests that interested stakeholders consider whether they would be supportive of the Council's recommendations and what the impacts/risks of the Council's recommendations are.

The Council's recommendations are as follows:

Recommended Changes to the Business Corporations Act (OBCA)

Proposal #1: Remove the current requirement under the OBCA that, generally, at least 25% of a business corporation's directors be Canadian residents.

Questions to Consider:

- What potential implications does removing the director residency requirements have on the accountability and transparency of corporations?
- What costs and/or benefits does your business associate with the current director residency requirements?

Proposal #2: Amend the OBCA to lower the approval threshold for a written shareholder resolution in lieu of a meeting for privately-held corporations (by lowering written shareholder approval to a majority of the voting shares (or special majority for

certain decisions)), instead of the current requirement for a unanimous written resolution.

Questions to Consider:

- Do you have any views on notice requirements that should be adopted for written shareholder resolutions in this context?
- Should certain decisions be exempted from a lower approval threshold and remain unanimous?

Proposal #3: Amend the OBCA to allow corporations to relieve or limit the liability of fiduciaries (e.g. directors and officers) arising from the corporate opportunity doctrine by allowing fiduciaries to pursue certain business opportunities without fear of liability arising from their duties in certain circumstances.

Questions to Consider:

- Should a corporation be allowed to renounce certain business opportunities in its articles in advance, and/or should directors/officers have to obtain authorization from the corporation prior to taking advantage of a business opportunity?
- How could this proposal be implemented?

Recommended Changes to the Arthur Wishart Act (Franchise Disclosure), 2000 (AWA)

Proposal #4: Clarify existing ambiguities and codify existing business practices under the AWA by bringing into force amendments to the AWA and making related amendments to the regulations under the AWA. Proposed amendments to the general regulation under the AWA could prescribe:

- The manner of determining “Total Initial Investment” for the purposes of the minimum and large investment thresholds;
- Any changes to the minimum and large investment threshold amounts for exemptions from disclosure;
- The amount of the deposit payment under which fully refundable deposit agreements that does not bind a prospective franchisee to enter into a franchise agreement would be exempt from disclosure;
- The information that must be contained in a Statement of Material Change; and
- The accounting standards for financial statements that must be included in the Disclosure Document.

Question to Consider:

- Should Ontario consider harmonizing these requirements with any particular Canadian jurisdiction(s)?

Recommended Changes to the Personal Property Security Act (PPSA)

Proposal #5: Allow the Registrar of the PPSA to discharge vexatious registrations on the Personal Property Security Registry.

Question to Consider:

- Should the Registrar have the power to request evidence (e.g. a copy of the security agreement) in the event the registration is not obviously vexatious?

Proposal #6: Amend the PPSA to enable a security interest in cash collateral in financial accounts (e.g. bank account funds) to be perfected by control to provide for a first priority security interest.

Question to Consider:

- Should the priority rule in subsection 30(7) of the PPSA be maintained such that a security interest in an account, inventory, and a financial account perfected by control as proposed, be subordinate to the interests of a beneficiary of a deemed trust arising under the Pension Benefits Act, the Pooled Registered Pension Plans Act, 2015 and the Employment Standards Act, 2000?

Proposal #7: Examine opportunities to modernize the Personal Property Security Registry, including amending the definition of “motor vehicle” to include more types of vehicles such as tractor trailers and ATVs.

Question to Consider:

- Should the definition of “motor vehicle” be expanded to include additional types of vehicles such as trailers, aircrafts and farm equipment? What specific types of vehicles should be included in the definition?

General Question

- How else can the Ontario government modernize its business laws to facilitate a prosperous business environment and reduce burden on business?

Privacy Statement

Please note that unless agreed otherwise by the Ministry of Government and Consumer Services, all submissions received from organizations in response to this consultation will be considered public information and disclosed by the ministry to help the ministry in evaluating and revising any future proposals. This may involve disclosing any response received to interested parties.

An individual who provides a response and indicates an affiliation with an organization will be considered to have submitted the response on behalf of that organization.

Responses received from individuals who do not indicate an affiliation with an organization will not be considered to be public. Responses from individuals may be used and disclosed by the ministry to help evaluate and revise any future proposals. Any personal information such as an individual's name and contact details will not be disclosed by the ministry without the individual's prior consent unless required by law.

If you have any questions about the collection of this information, please contact businesslawpolicy@ontario.ca.