

MAIN PROVISIONS OF THE CANADA COOPERATIVES ACT BACKGROUND

Important legislation for the cooperative sector

- Provincial legislation providing for the establishment of cooperatives dates from the early 20th Century. The federal government followed suit in 1970, passing the *Canada Cooperatives Associations Act*.
- In March 1996, the cooperative movement submitted a draft model act to the government. The model provided cooperatives with greater flexibility to respond to the demands of competitive domestic and international markets, both now and in the future. This bill is the result of that initiative.
- The bill is in line with relevant sections of the *Canada Business Corporations Act (CBCA)*, which governs business corporations, yet it includes special provisions to take into account the specific nature of cooperatives.

Cooperative principles

- The basis for the cooperative principles set forth in the bill are those established by the International Co-operative Alliance (ICA), an independent non-governmental organization founded in 1895 to link cooperative movements in several countries and foster an environment conducive to cooperation on a worldwide scale. These principles were updated in 1966, and again in 1995.
- In its definition, the term ‘cooperative basis’ is expressed as a broad and substantive concept. Any member or other interested person can invoke it to ensure that every organization incorporated under this Act is in compliance with the modern cooperative principles listed below (except for some statutory exceptions):
 - (a) open membership;
 - (b) one member, one vote;
 - (c) members may not vote by proxy;
 - (d) limited interest on member loans;
 - (e) limited dividends on members' shares;
 - (f) as much as possible, members provide requisite capital;
 - (g) distribution of surplus among members; and
 - (h) cooperative education.

Incorporation

- Cooperatives may incorporate, provided they operate on a 'cooperative basis', and, in the case of worker cooperatives or non-profit housing cooperatives, in accordance with the specific provisions set out in the bill. Incorporation procedures are designed to protect the cooperative principles set forth in the bill.
- The provision in the current Act which stipulates that a federally incorporated cooperative must operate in more than one province is maintained in the bill.
- The current Act comprises a complex system of articles of incorporation, charter by-laws and regular by-laws. The bill replaces these with a simplified structure, consisting of articles of incorporation and by-laws similar to those available to business corporations.

Members

- Membership is governed by the by-laws established by the cooperative itself. Membership is open to individuals, other cooperatives, business corporations and other entities, if the members so wish.

Capitalization

- New financing provisions are uniquely enabling, opening the door to new financing options, though cooperatives may decide to continue with traditional retention of patronage returns, issuing preferred shares and debt financing. The new provisions afford greater flexibility, meeting the financing needs of a wide variety of cooperatives.
- Cooperatives have the option of issuing investment shares for transfer to members and non-members. But, there are safeguards to protect the cooperative structure and its members. For example, members must expressly authorize the issue of investment shares, and issuing conditions must be set forth in the cooperative's articles of incorporation. Moreover, the proposed provisions guarantee that members maintain control of the cooperative, while authorizing investors to bring in capital.
- Cooperatives also have the option of issuing membership shares, without par value (instead of traditional membership shares at par value). No par value membership shares will increase or decrease in value according to the cooperative's financial condition. New solvency rules and other capital-related requirements protect members and investors against improper redemption in a cooperative structured with membership shares with or without par value, or investment shares, as applicable.

Corporate instruments

- Under the current Act, cooperatives wishing to restructure their organizations are limited in their options. The bill makes a number of significant changes to the corporate instruments available, harmonizing them with those available to business corporations.
- Cooperatives are given rights to amalgamate, as are available to corporations under the *Canada Business Corporations Act*.
- Under the bill, the power to authorize an arrangement or reorganization is vested in the courts, rather than the Minister.

Directors

- At least two-thirds of a cooperative's directors must be either members of the cooperative or representatives of members that are cooperatives, business corporations or other entities. One-third of the directors may be outside directors. If the cooperative issues investment shares, members may decide to authorize investment shareholders to elect no more than 20 per cent of the directors.
- The bill permits members to limit the powers of the board of directors, either through their right of control over the articles of incorporation or through a unanimous agreement. Thus, members maintain control over both the board of directors and the cooperative itself.
- Directors are subject to a statutory duty of care and fiduciary duty. The bill modernizes, clarifies and limits these duties.