

Highlights of Business Legislation Reform Project

Amendments to the *Business Corporations Act*

The *Business Corporations Act* enables and regulates the creation (“incorporation”) of Yukon corporations and the registration of corporations created in other jurisdictions that also wish to be registered in the territory. The act sets out the processes for creating a corporation, management, dissolution and revival, amalgamation, continuance into other jurisdictions, and fundamental changes to a corporation’s constitution.

This bill is the largest, most comprehensive and complex of the five acts in the Business Legislation Reform Project. The changes fall into three main themes:

Corporate Governance

Modernization of the *Act* and measures to:

- Enhance the effectiveness of audit requirements;
- Clarify financial structures and transactions;
- Improve record-keeping;
- Clarify decision-making and responsibilities/liabilities of management;
- Balance privacy concerns with public access to information;
- Regulate foreign entities carrying on business in Yukon;
- Clearly address shareholder remedies; and
- Address corporate reorganizations.

Securities Transfer Law

Sections dealing with security certificates, registers and transfers have been deleted as they are now covered by the new *Securities Transfer Act*.

Housekeeping amendments

- Correct errors and omissions;
- Update terminology;
- Allow most naming requirements to be specified in regulations rather than fixed in the act;
- Remove provisions that duplicate (and sometimes conflict) with the *Securities Act*;
- Allow penalties for violation to be set by regulation rather than fixed in the act; and
- Clarify various administrative procedures (e.g. correcting errors, dating of documents, etc.).

Amended regulations to the *Business Corporations Act*

- Update definitions;
- Update forms, fees and penalties;
- Clarify that steps required of public corporations regulated by the *Securities Act* do not have to be repeated for the *Business Corporations Act*;
- Set timelines regarding meetings, election of directors etc.;
- Specify detailed requirements regarding shareholder proposals;
- Describe how a company may elect to have no directors;
- Update requirements for financial statements and audits;
- Update amalgamation requirements;
- Set various timelines, including those for documentation sent by mail;
- Provide for electronic communication.

- Allow (if it so decides) YG to recognize and regulate new forms of business entities in the future; and
- Include transitional provisions for the transfer of registration of extra-territorial cooperatives and societies from the *Business Corporations Act* to the *Cooperative Associations Act* and the *Societies Act*, respectively.

Creation of *Securities Transfer Act*

The purpose of the *Securities Transfer Act* is to clarify the rights and responsibilities among the various parties involved, once the terms of a securities purchase and sale have been reached, including circumstances where securities will be used as collateral for lending or credit.

The *Securities Transfer Act* is part of a national initiative that is modernizing the legal framework for regulation of securities transactions nationally and keeps Yukon aligned with other jurisdictions across Canada. It brings Yukon up-to-date with current business realities, including giving the same kind of legal certainty to electronic transfer of securities that applies to transfer of 'paper' securities.

The new act removes some securities transfer rules from the *Business Corporations Act* and has required 'consequential' changes to other legislation, including the *Choses in Actions Act*, *Executions Act* and the *Personal Property Security Act*.

Amendments to the *Societies Act*

The *Societies Act* is the legislation under which "not-for-profit" organizations are incorporated and governed in Yukon.

Changes are complementary to maintain/improve consistency with the *Business Corporations Act* and move registration of 'extra-territorial' societies from that act to the *Societies Act*.

Other changes:

- Clarification of 'naming' requirements to help ensure consistency in naming provisions of all business-related legislation;
- Clarification of the process to dissolve and revive a society; and
- Processes added to revive a society.

Amended regulations to the *Societies Act*

- Updates to definitions and terminology;
- Updating of "categories" of societies to account for inflation;
- Modernization of technical accounting and documentation requirements;
- Clarification of conflict of interest rules;
- Updating of requirements/standards regarding meetings;
- Extra-territorial societies will now be regulated under the *Societies Act*. This will permit them to offer the same services in Yukon as in their home jurisdictions, promoting the principles set out in the Agreement on Internal Trade (AITT);
- Forms have been updated; and
- Fees remain unchanged.

Amendments to the *Cooperative Associations Act*

The *Cooperative Associations Act* is the legislation under which cooperative associations are incorporated and governed in Yukon.

Most of the changes are complementary to maintain/improve consistency with the *Business Corporations Act*.

- Additional definitions due to new provisions regarding extra-territorial cooperative associations;
- Changes to naming guidelines to make them consistent with other statutes;
- Clarification of the way in which the liquidation, dissolution and revival provisions in the *Business Corporations Act* are to be applied to cooperative associations; and
- Modernization of the description of circumstances under which an extra-territorial cooperative association is considered to be operating in Yukon, including requirements and the process for registration, cancellation and reinstatement of such associations.

Amended regulations to the *Cooperative Associations Act*

- Some *Business Corporations Act* forms will also be applicable to the *Cooperative Associations Act*;
- Extra-territorial cooperative associations previously registered under the *Business Corporations Act* must now be registered under the amended *Cooperative Associations Act*; and
- Forms, fees and penalties have been updated.

Amendments to the *Partnership and Business Names Act*

The *Partnership and Business Names Act* is the legislation under which sole proprietorships are named, various types of partnerships are governed in Yukon and under which the use of trade names is regulated.

Most of the changes are complementary to maintain/improve consistency with the *Business Corporations Act*.

- The most significant change is the introduction of Limited Liability Partnerships (LLPs) which are common in other jurisdictions. Only those professions whose governing acts permit LLPs or professions prescribed in regulations will be allowed to register as an LLP and professional malpractice insurance will be mandatory;
- Updating of language and terminology for limited partnerships (which are different from a limited liability partnership);
- Clarification of partnership registration and filing requirements, sole proprietorship registration requirements and business 'naming' requirements;
- Modernization of government record-keeping requirements;
- Repeal of outdated provisions;
- A process of appealing decisions of the Registrar is now in place; and
- A new section governing Offences and Penalties has been created.

Amended regulations to the *Partnership and Business Names Act*

- Limited Liability Partnerships (LLPs) can now be registered in Yukon;
- Listing of 'home' jurisdictions from which Yukon will accept limited partnerships;
- Updated reporting requirements;
- Description of which professions may operate as LLPs; and
- Updated fees, forms and penalties.

Naming regulations that now apply to the *Business Corporations Act, Cooperative Associations Act, Partnership and Business Names Act* and *Societies Act*

A standard convention for the various 'business-type' organizations (corporations, partnerships, societies and co-ops) to name themselves now applies to all business statutes. This streamlines the process of registration in Yukon. The same naming rules will now apply under all of these statutes. The regulations include:

- Clarification of definitions;
- Clarification that name approval **does not** confer copyright or trademark protection;
- Descriptions of what 'characters' may be included in a name are now set out (letters, numerals and certain symbols);
- Minimum and maximum number of characters;
- Rules regarding:
 - Use of 'legal elements' such as Inc., Ltd., etc.;
 - Use of 'family' names;
 - The maximum length of a name, the types of names that can be used;
 - Acceptability of geographical names;
 - Use of an individual's name;
 - Names that are largely identical to existing names.
- Rules forbidding:
 - Names that would wrongly imply affiliation with certain governments and other organizations;
 - Objectionable names;
 - Names that could wrongly imply that the entity practices certain professions.

Amended regulations to the *Personal Property Security Act*

The *Personal Property Security Act* is the legislation that makes it possible to "secure" lending or credit with "personal" property (property other than land). For example, when a vehicle is purchased with money borrowed from a bank, the bank registers its "interest" against the vehicle in the registry created by the *Personal Property Security Act* and operated by the Corporate Affairs Branch of Community Services, Government of Yukon.

- Update of required documentation;
- Update of language to accommodate the new *Securities Transfer Act*;
- Certain 'housekeeping' amendments; and
- 'Grandfathering' of registrations that were done before recent legislative changes.