

Ministry of Infrastructure

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May 14, 2014

Director General
Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor
Ottawa, Ontario
K1A 0H5

Dear Sir/Madame:

Re: Consultation on the *Canada Business Corporations Act*

I am writing on behalf of the Ontario Ministry of Infrastructure to provide comments on Industry Canada's consultation document on the *Canada Business Corporations Act* entitled Corporate, Insolvency and Competition Law Policy.

Ontario law provides that when a corporation, incorporated under an Ontario statute, is dissolved any property owned by the corporation that has not been disposed of at the time of dissolution forfeits to the government of Ontario. The Ministry of Infrastructure (MOI) manages most forfeited corporate property in Ontario and it is with respect to the treatment of forfeited corporate property under the *Canada Business Corporations Act* that I will restrict my comments.

The Ministry of Infrastructure (MOI) has undertaken a broad public consultation, beginning in 2012, on a proposed management framework for forfeited corporate property. The goal of the framework would be to:

- Reduce the number of corporate properties that forfeit to the government of Ontario;
- Return forfeited corporate properties to productive use in a timely and efficient manner;
- Increase corporate accountability for costs associated with forfeited property; and
- Provide greater transparency and certainty in the management and disposition of forfeited corporate property.

More specifically, the consultation document set out proposed changes to the ability of dissolved corporations to recover that has vested in the Crown and to time limits for the revival of corporations. I note that this is relevant to some of the administrative and technical matters relating to the *Canada Business Corporations Act* that Industry Canada has identified for review in section X. Administrative and Technical Matters in the following questions:

- A. Should property of dissolved corporations that has vested in the Crown under the CBCA automatically be returned to revived CBCA corporations?**

C. Should there be a time limit on the revival of a corporation that has been dissolved? Further, before returning property to a revived corporation, should the Crown be able to recover money spent on that property?

The following section from the consultation document entitled *Revitalizing Forfeited Corporate Property – Proposals for a framework for the management of forfeited corporate property* outlines the proposed changes which relate to questions A. and C. above.

2.2 Limitation period for a dissolved corporation to recover property upon revival

Discussion

The Business Corporations Act provides for a 20-year window in which an administratively dissolved corporation can be revived by filing Articles of Revival. Articles of Revival must be accompanied by the applicable consents from ministries and a "no objection to the revival" letter from the Public Guardian and Trustee where required. Under the Business Corporations Act, once a corporation is revived it is deemed to have never been dissolved. Upon revival, any property that had forfeited to the government of Ontario upon dissolution would be automatically returned to the corporation, subject to third-party rights, if any, acquired during the period of dissolution. After 20 years, administratively dissolved corporations can only be revived through a request for a private bill. A corporation that has voluntarily dissolved can only be revived through via a private bill.

The changes proposed below would encourage active corporations to stay current with their statutory requirements (such as paying corporate taxes and filing requirements) and to keep track of corporate property holdings. The proposed changes would also allow the Crown to put forfeited properties back into productive use in a timely and efficient manner. Furthermore, the proposed changes in this section seek to increase corporate accountability and avoid unnecessary spending of taxpayer dollars on the management of forfeited corporate property.

Alberta's forfeited property legislative framework provides a five year limitation period for dissolved corporations to recover forfeited property if they are revived. In British Columbia, if a corporation is revived more than two years after the date of dissolution, the forfeited property is not recoverable other than through a court process.

Proposed Change(s)

Option A)

- *Provide that on the third anniversary of the dissolution of a corporation any property that forfeited to the government of Ontario as a result of dissolution would remain forfeited to the government of Ontario and not be returned to the corporation upon revival.*

OR in the alternative

Option B)

- *Provide that when a corporation is dissolved, property that forfeits to the government of Ontario is only recoverable if the revived corporation makes a request to the Minister of Infrastructure before the third anniversary of the dissolution.*

The following would apply to either option above:

- *The Minister of Infrastructure would have discretionary authority to consider requests for recovery of property in extenuating circumstances (see Section 2.6).*
- *Prior to returning property, the Minister of Infrastructure could require payment of any expenses incurred by the government of Ontario as well as any outstanding debts owed to the government of Ontario.*
- *The current 20-year revival period for a corporation would not be impacted.*

You may also find the following sections of the consultation document of interest:

- 1.1 Stricter due diligence requirements for land-holding corporations seeking to voluntarily dissolve
- 2.6 Mechanisms for the Minister of Infrastructure to grant or release the government of Ontario's interest in forfeited corporate property, including at nominal or reduced value if in the public interest
- 3.1 Agreement of the Minister of Infrastructure and the Minister of the Environment to revival of a corporation
- 3.2 Express authority for the government of Ontario to revoke administrative dissolutions of land-holding corporations where it is in the public interest
- 3.3 Express authority for former directors and officers of a dissolved corporation to be held liable for costs of the government of Ontario regarding forfeited corporate property

The consultation document in its entirety can be found at:
<http://www.moi.gov.on.ca/en/about/RFCP.asp>

Thank you for the opportunity to outline some of the proposed changes that the Ministry of Infrastructure is proposing to manage forfeited corporate property as part of Industry Canada's consultation on the *Canada Business Corporations Act*. Should you have any follow-up questions on our proposed framework please contact Kathy Ruston, Senior Policy Lead at Kathy.ruston@ontario.ca or (416) 325-1671.

Sincerely,



Mary Bartolomucci
Director, Realty Policy Branch
Ministry of Infrastructure

