

## BACKGROUND

### SUMMARY OF AMENDMENTS OF THE *CANADA COOPERATIVES ACT*

Legislation tabled today in the Senate puts forward proposals to complete the reform of the *Canada Cooperatives Act (CCA)* that was last amended by Parliament in 1998. A new CCA came into force on December 31, 1999.

The CCA is a framework law for the incorporation of non-financial cooperatives at the federal level. It governs cooperatives that include some of the largest business enterprises in Canada. The CCA is modelled on framework laws for corporations. It provides cooperatives and their members the framework they need to prosper, consistent with cooperative principles.

The amendments are introduced concurrently with amendments to the *Canada Business Corporations Act (CBCA)*, which governs federal corporations. The CCA, adopted in 1998, already incorporates a number of amendments now proposed for the CBCA. However, many issues were set aside in the 1998 reform, pending ongoing consultations on the CBCA. This bill addresses these issues and harmonizes the CCA with key elements of corporate law in line with the Government of Canada's commitment in the Speech from the Throne to modernize legislation.

Together with the law adopted in 1998, the proposed amendments to the CCA will expand the rights of shareholders in federal cooperatives, improve accountability, and reduce costs. The bill also includes a number of technical amendments.

The highlights of the CCA amendments are described below. For the most part, the amendments follow closely the amendments to the CBCA described in a separate background.

#### **Shareholder Proposals**

With the CCA coming into force at the end of 1999, cooperatives had the option of issuing investment shares for transfer to members and non-members. While the CCA guarantees that members maintain control of the cooperative, share owners also have a role in cooperative decision-making. For instance, shareholders are allowed to make proposals at annual meetings. The current rules regarding shareholder proposals are being harmonized with the proposed CBCA amendments. There is no change regarding proposals submitted by members.

#### ***Proposed amendment:***

- set minimum share ownership and length of ownership requirements as a prerequisite for submitting a proposal.

The requirements for minimum shareholdings and for the minimum length of time for owning shares ensure that proposals are founded on a genuine stake and interest in the affairs of the cooperative. At the same time, provisions will allow the pooling of shareholdings to meet the minimum requirements. This will improve the right of shareholders to submit proposals, without forcing them to purchase additional shares. The amendments, taken together, will thereby allow wider participation by small shareholders in decision making.

### **Modified Proportionate Liability**

Currently, individuals who are found negligent in the preparation of financial information are subject to joint and several liability. The injured party can seek full compensation from any of the defendants found liable. The injured party therefore has an incentive to pursue the most accessible and creditworthy defendant regardless of fault. It is then left up to that defendant to recover contributions from the other negligent defendants.

The Standing Senate Committee on Banking, Trade and Commerce, after studying this issue in detail and consulting with many stakeholders, concluded that the current regime of joint and several liability could have adverse implications for the financial reporting system and capital markets.

#### ***Proposed Amendment:***

- provide for a regime of modified proportionate liability for persons involved in the preparation of financial information required by the CCA.

The amendment provides that every defendant found responsible for a financial loss arising out of an error, omission or misstatement in financial information that is required under the Act or the regulations would be liable to the plaintiff for the portion of the damages corresponding to the defendant's degree of responsibility. Allocation of responsibility among the parties is provided for in the event one or more defendants are insolvent or unavailable. The joint and several liability regime would continue to be available to designated categories of plaintiffs, specifically the Crown, charitable organizations, unsecured trade creditors and individual plaintiffs whose investment in the corporation is below a prescribed threshold.

### **Insider Trading**

The CCA currently does not include adequate civil liability provisions (which allow those harmed to take legal action) with respect to insider trading.

#### ***Proposed amendment:***

- expand the scope of civil liability provisions.

This amendment would impose civil liability on persons who communicate undisclosed confidential information, regardless of whether or not a transaction occurs.

### **Financial Assistance**

The CCA restricts the provision of loans, guarantees and other kinds of financial assistance by the cooperative to members, shareholders, directors, officers or employees of the cooperative where the directors have "reasonable grounds for believing that" either the cooperative is or would become insolvent or the cooperative's assets are or would be less than all of its liabilities and stated capital.

This requirement has proven difficult to apply in practice. The solvency test and the potential liability can impede legitimate financial transactions that may be in the best interests of the cooperative.

***Proposed amendment:***

- repeal the provision on financial assistance.

Directors approving financial assistance transactions are subject to statutory fiduciary duties to act in the best interests of the cooperative, and they can be sued for failure to do so. This provides adequate safeguards.

**Technical Amendments**

A set of technical amendments are proposed. These will make the CCA and CBCA wording similar, harmonize the provisions found in both CCA and CBCA and update terminology.