

# STEP Inside

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## PROPOSED REVIEW OF ONTARIO BUSINESS LEGISLATION

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In its 2015 budget, the Ontario government stated its intention to review Ontario's corporate and commercial statutes "to ensure Ontario has modern laws that facilitate an efficient market and prosperous business climate." Over 60,000 new corporations are created each year, according to the statistics in the Ontario budget.

The government also confirmed its intention, which was outlined in the *2014 Economic Outlook and Fiscal Review*, to re-examine the regulation of financial advisory and planning services. An expert committee has been appointed to consider the regulation of financial advisers, including financial planners. The target date for the submission of the committee's report is early 2016. No other details have been provided.

On July 9, 2015, an expert panel appointed by the Ministry of Govern-

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ment and Consumer Services released a report in which it set out priorities for business law reform. The report is entitled *Business Law Agenda: Priority Findings and Recommendations Report*; it is available on the Ontario government website at <http://www.ontariocanada.com/registry/view.do?postingId=18942&language=en>.

Submissions from interested parties will be accepted until October 16 2015 at [http://www.sse.gov.on.ca/mcs/en/Pages/Public\\_Consultations.aspx](http://www.sse.gov.on.ca/mcs/en/Pages/Public_Consultations.aspx)

The recommendations in the report are broad-ranging. They include repealing the *Bulk Sales Act* (because Ontario is the only province with such arcane legislation); establishing a more accessible self-service electronic system for registration and filing; and reviewing the *Personal Property Security Act* to, among other things, facilitate the use of cash collateral and repeal the requirement that a copy of registrations be delivered to debtors. Several of the report's more general recommendations are mentioned below.

The authors of the report recommend the establishment of a formal process for continuously reviewing and updating Ontario's corporate and commercial statutes. Presently, no such system is in place. The proposed process will provide a means by which policy can be addressed; it will also provide a forum in which stakeholders can raise issues arising from the changing business environment and uncertainties in interpreting or applying legislation.

The authors of the report recommend expanding the availability of limited liability partnerships (LLPs). At present, an LLP can be used only for the purpose of practising a regulated profession, provided that the profession's governing statute allows for the use of LLPs and also provided that the profession's governing body requires LLPs to maintain a minimum amount of liability insurance. On the basis of these criteria, LLPs can be used by lawyers and chartered professional accountants in Ontario. The authors of the report note that an LLP can be an attractive business vehicle because one partner is not liable for another partner's misconduct or negligence, and they

recommended that professionals other than lawyers and accountants be allowed to use the LLP structure. It is unclear whether this recommendation extends beyond professional practices to cover other businesses as well. In British Columbia, for example, LLP legislation does not restrict the use of LLPs to professionals.

The authors of the report further recommend a review of the *Limited Partnerships Act* to reduce a limited partner's scope of liability. Under the current legislation, while the general partner of a limited partnership is subject to all the liabilities of a partner, a limited partner is not liable for the obligations of the partnership, unless he "takes part in the control of the business" of the limited partnership. A limited partner's liability is limited to the value of the money or property that he contributes or agrees to contribute to the partnership. For limited partnerships, the risk of the loss of limited liability is an important consideration in structuring business transactions. In this regard, the authors of the report contrast the current Ontario legislation with the Manitoba legislation, under which a limited partner who is active in a partnership business does not lose limited liability.

The authors of the report recommend that Ontario permit the incorporation of unlimited liability corporations (ULCs). ULCs are often used in Canada-US cross-border transactions. The possibility of enacting ULC legislation was considered as part of the government's 2007 Business Law Modernization Agenda. The Business Law Subcommittee of the Ontario Bar Association (which provided comments and recommendations on the agenda) recommended its enactment at the time, but no change was made.

The authors of the report also recommend that Ontario eliminate the director residence requirement in the Ontario *Business Corporations Act* (OBCA). At present, corporations that are incorporated under the OBCA must have at least 25 percent Canadian-resident directors. Some provinces have already eliminated any such requirement. Eliminating the director residence requirement was also considered in the government's 2007 Business Law Modernization Agenda but no change resulted.

The review and reform of legislation is often a slow process. Any future developments will be summarized in later articles.