Tracking Federal Regulatory Initiatives

Regulatory Affairs

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Canada Business Corporations Regulations, amendment (Insider trading, proxies, financial disclosure and take-over bids)

Canada Business Corporations Act, section 261

IC/96-13-L

To be published in Canada Gazette September 13, 1997

This amendment proposes to amend Parts III, IV, V and VIII of the *Canada Business Corporations Regulations* concerning insider trading, proxies and proxy solicitation, financial disclosure and take-over bids respectively.

Most of 60 amendments being proposed are technical in nature and non-controversial. In general, the proposed amendments are intended to eliminate unduly burdensome requirements, harmonize the Regulations with concurrent provincial securities legislation, and improve the level of disclosure required in these areas.

Generally, the amendments propose to:

- eliminate items of disclosure which are not in provincial regulation and which do not appear to be of material interest to shareholders;
- adopt wording that is more consistent with provincial regulation, where warranted, as well as to require additional items of disclosure of material interest currently in provincial legislation but lacking in the Regulations; and
- ensure that certain disclosure items do not extend to private companies when the information is of material interest to shareholders of a public company.

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More specifically, the amendments with respect to insider trading would:

- allow insiders to send insider reports using either Form 24 in Schedule I. 1 of the Regulations or the insider report form prescribed under any provincial securities laws.
- allow insiders of CBCA public corporations which have not distributed their securities in Canada to file U.S. insider reports. This will eliminate the cost of preparing additional insider reports (for reporting under the CBCA) or of applying for an exemption under subsection 127(8) of the CBCA.
- revoke paragraph 31.1 requiring corporations with 15 or more shareholders to advertise the fact that they propose to purchase or otherwise acquire their own shares. This requirement is not considered necessary given the fact that there are already adequate provisions under the stock exchange rules in this regard with respect to listed corporations. The proposal would eliminate altogether the expensive and unduly burdensome requirement of publishing a notice in the newspapers with respect to private corporations with 15 or more shareholders.

More specifically, the amendments with respect to the contents of management proxy circulars would:

- delete the provision requiring disclosure of the general nature of constrained share provisions if the corporation has amended its articles to constrain the issue or transfer of its voting shares (paragraph 35(g)). Section 52 of the Regulations already requires disclosure of constrained share provisions.
- restrain the scope of disclosure with respect to various items in the regulations, such as paragraphs 35(r) and (aa), to "subsidiaries and holding bodies corporate", instead of the larger web of companies defined by the term "affiliates". This will facilitate disclosure by reducing the scope of companies caught and be more in line with the provisions of the provincial securities laws which refer to "subsidiaries" in most cases. The proposal to refer to "holding bodies corporate" is in our view necessary to ensure disclosure of information of material interest to shareholders.
- revoke the disclosure required with regard to the name of the person who acquires control, the date and a description of the transaction if there is a change in the effective control of the corporation (paragraph 35(n)). The purpose of this amendment would be to eliminate a regulatory requirement which is a regulatory burden to the corporation without providing shareholders with information of material interest. Also, the information required by this section is largely available through other means including the inclusion of disclosure as to shareholders holding more than 10% of the voting shares.
- amend the requirement of the disclosure of a five-year employment history for all continuing and proposed directors. Corporations would only be required to disclose employment history for proposed directors (sub-paragraph 35(r)(ii)).
- amend the disclosure provision dealing with the persons indebted to a corporation. The disclosure of "routine indebtedness", as will be defined, will no longer be required (paragraph 3 5(v)). The purpose is to revoke a requirement that does not provide to the shareholders information of material interest.
- increase the threshold of outstanding debt which must be disclosed in the proxy circular to $25,000 from $10,000.

- require the management proxy circular to state whether the reporting issuer has an executive committee of its Board of Directors or is required to have an audit committee and, if so, to name those directors who are members of each such committee. This proposal will provide information of material interest to the shareholders and it will also harmonize the requirement with provincial securities legislation.

More specifically, the amendments with respect to the contents of a dissident's proxy circular would:

- reduce the amount of information that a dissident must disclose by eliminating many provisions under section 38, including repealing some of the requirements with regard to details of the identity and background of each dissident, where more comprehensive information is required from dissidents than of directors in management proxy circulars (sub-paragraph 38 (c)(iii)).
- repeal disclosure of the fact that a person has previously been a dissident in respect of another corporation (sub-paragraph 38(c)(iv)). This requirement is a regulatory burden for a dissident without providing other shareholders with information of material interest.
- amend sub-paragraph 38(c)(v) so that dissidents must disclose whether they have been convicted of crimes of an economic nature such as fraud or market manipulation.

More specifically, the amendments with respect to the contents of financial disclosure would:

- revoke section 47 which requires separate disclosure of financial information by reporting classes of business. Disclosure should rather be based on the requirements under the CICA Handbook.

More specifically, the amendments with respect to the contents of take-over bids would:

- with regard to an exempt offer in a take-over bid situation, amend section 58 of the regulations which requires a corporation in certain circumstances, among other things, to place detailed advertisements in newspapers. This section would be amended by requiring corporations which comply with the rules under recognized stock exchanges to simply send to the Director a copy of the documents filed pursuant to the stock exchange rules. This will confirm the actual administrative practice.
- amend section 58, to eliminate the reference to the rules under the over-the-counter market as a possible source of exemption on the basis that there are no recognized rules dealing with take-over bids under such a regime.
- with respect to take-over bid circular under subsection 198(1) of the Act, clarify the wording by requiring simply the name and a brief description of the activities of the offeror (section 59). In the present Regulations, two of the items to be contained in a take-over bid circular are the identity and business background of the offeror.
- with respect to take-over bid circulars under section 200 of the Act, harmonize the Regulations with parallel provincial securities provisions which do not require proforma financial statements unless these statements would disclose a material change in the financial statements of the offeror arising as a result of the offer (section 60). This exception would result in substantive savings for offerors in circumstances where "pro forma" statements are not necessary on the basis of materiality.

- require offerors to certify that no misrepresentation has been made (proposed section 66A) in the take-over bid circular, in order to provide for more assurance that the information provided in a take-over bid circular is complete and not misleading
- expressly require a bidder to prepare an amendment to a take-over bid circular in the event that there are changes to material statements in the initial take-over bid circular (section 67).
- adopt the provincial securities law threshold of preparing an amendment to a take-over bid only if the change "would reasonably be expected to affect the decision of the holders of securities".
- delete certain requirements of less significance and add new provisions which will provide shareholders with information of material interest (proposed paragraphs 68(p)-(z)).
- require the directors of offerer corporations to certify that no misrepresentation has been made (proposed section 73A) in the directors' circular.

There has been no expressed opposition to the proposed changes.

Contact: Guylaine Huot, Corporations Directorate, Department of Industry, 10th floor, Jean Edmonds Tower South, 365 Laurier Ave. West, Ottawa, Ontario. Tel: 613-941-5728; Fax: 613-941-5781; e-mail: huot.guylaine@ic.gc.ca.

Canada Business Corporations Regulations, amendment (Constrained share corporations)

Canada Business Corporations Act, sections 46 and 261

IC/96-12-L

To be published in Canada Gazette September 13, 1997

This amendment proposes to amend sections 51 and 57(2)Parts III, IV, V and VIII of the *Canada Business Corporations Regulations* concerning constrained shares.

More specifically, the amendment to section 51 would expand the list of constrained share corporations that must disclose to their shareholders that the corporation intends to sell the shareholders' shares without the shareholders' knowledge.

The amendment would specify that disclosure must be made, not only to shareholders of corporations incorporated under the *Canada Business Corporations Act* (CBCA) selling shares to qualify under laws prescribed in section 57(2) of the regulations (e.g., the *Canada Oil and Gas Act* and the *Petroleum Incentives Program Act*), but also to shareholders of corporations selling shares to comply with loan, trust or insurance corporation legislation. The disclosure would alert the shareholders that the corporation intends to sell the shares of the shareholders without their knowledge. This would give shareholders an opportunity to reply or object, if they so choose.

The amendment will also remove the *Canada Oil and Gas Act* and add the *Canada Petroleum Resources Act* in section 57(2)(a) because the *Canada Oil and Gas Act* has been repealed and replaced by the *Canada Petroleum Resources Act*.

Contact: Coleen Kirby, Senior Compliance Officer, Corporations Directorate, Department of Industry, 9th Floor, Jean Edmonds Tower South, 365 Laurier Ave. West, Ottawa, Ontario, K1A 0C8. Tel: 613-941-5720; Fax: 613-941-5781; e-mail: kirby.coleen@ic.gc.ca.

Toronto - Lester B. Pearson International Airport Zoning Regulations

Aeronautics Act

TC/R-8-L

To be published in Canada Gazette September 13, 1997

The proposed zoning regulations will limit the height of new buildings, structures and objects or additions to any existing buildings, structures or objects, including objects of natural growth, and will prohibit the disposal of any waste edible by or attractive to birds on lands within eight kilometres of the Toronto-Lester B. Pearson International airport reference point.

The regulations would also prohibit such lands from being used or developed in a manner that causes interference with any signals or communications to from any aircraft or to and from any facilities used to provide services relating to aeronautics.

Property owners within the limits of the outer surface, within a radius of 4,000 metres from the airport reference point, would be restricted in any construction within that area to an elevation of 45 metres above the airport reference point elevation and, within the runway approaches and transitional surfaces, to more restrictive limitations.

Affected municipalities were advised in June 1993 of the intention to make the proposed regulations. In September 1994, the Minister of Transport announced the decision to construct a second north-south runway and the future possibility of additional east-west runways.

Contact: Debra D. Taylor, Regional Director Civil Aviation, Transport Canada, Ontario Region, 4900 Yonge Street, Suite 300, Willowdale, Ontario, M2N 6A5. Tel: 416-952-0904.

Canadian Aviation Regulations, amendment (Part V)

Aeronautics Act

TC/95-33-L

To be published in Canada Gazette September 13, 1997

The proposed regulations, which were still under development when the Canadian Aviation Regulations were first implemented in October 1996, would update existing airworthiness provisions.

More specifically, Part V (Airworthiness), Subpart 11 (Approval of the Type Design of an Aeronautical Product), Subpart 13 (Approval of Modification Subpart 16 (Aircraft Emissions), Subpart 22 (Gliders and Powered Gliders), Subpart 23 (Normal, Utility, Aerobatic and Commuter Category Aeroplanes), Subpart 25 (Transport Category Aeroplanes), Subpart 27 (Normal Category Rotorcraft), Subpart 29 (Transport Category Rotorcraft), Subpart 31 (Manned Free Balloons), Subpart 33 (Aircraff Engines), Subpart 35 (Aircraft Propellers), Subpart 37 (Aircraff Appliances and Other Aeronautical Products), Subpart 41 (Airships), Subpart 49 (Amateur-Built Aircraff) and Subpart 51 (Aircraff Equipment) of the Canadian Aviation Regulations will replace Subpart 11 (Design).

With the exception of a few minor revisions, proposed Subparts 11 (Approval of the Type Design of an Aeronautical Product), 13 (Approval of Modification and Repair Designs), 16 through 49 and 51 (Aircraff Equipment) and their associated Standards will leave unchanged current regulations and standards, accepted industry practices and Transport Canada policy in general application throughout the industry. The technical content of the revised regulations and standards has been clarified and the application of accepted practices and policies will be normalized as a result.

Some regulations within Division II contain minor changes from present requirements. CAR 511.07 (Applicable Standards), in subsection 511.07(1)(b), will extend and clarify the definition of “special conditions” which may be specified by the Minister, when issuing a type certificate, to include cases in which no applicable standards of airworthiness for the aeronautical product have been established.

CAR 51 1.07(1)(c) will require that the standards for noise, fuel venting and engine emissions specified in Subpart 16 (Aircraft Emissions) which must be satisfied by an applicant for the issuance of a type certificate are those in force on the date on which the type certificate is issued rather than those in force on the date at which the application was made.

CAR 511.09 (Function and Reliability Test Flights) will extend the requirement to conduct function and reliability test flights, when a type certificate is applied for, to airships with passenger capacity for 10 or more passengers.

Proposed Regulations

for Pre-Publication in Part I, Canada Gazette

Statutory Authority & Regulatory Plan Listing

Canadian Aviation Regulations 511.34 (Supplemental Integrity Instructions) will mandate airworthiness requirements which must be met to ensure continued safe operation of older aircraft. The new regulation and its associated standards, which can be found in Airworthiness Manual, Chapter 511, section 511.34, contain minor differences from the AMA.

The AMA was applicable to "each aircraft type registered in Canada, of either Canadian or foreign manufacture, that has a passenger seating capacity of 10 or more seats, as specified in the Type Approval including amendments thereto". CAR 511.34 will be applicable to "an aeroplane for which a type certificate in the commuter category or the transport category has been issued and that is operated pursuant to Subparts 4 and 5 of Part Vll". This change will exempt operators of helicopters and of private corporate jet aeroplanes, operated under CARs 604, from the need for inspecting their aircraft in accordance with Supplementary Structural Integrity Directions (SSIDs). The change captures current practices followed by both sets of operators and accepted by Transport Canada.

The AMA and the proposed regulation also differ with respect to the time period allowed for development of the information necessary to formulate an SSID prior to the completion of one design life of an aircraft and to the time period allowed for implementation of the necessary inspections by the operator of the aircraft.

Under the AMA these periods are two years and six months, respectively, i.e. the holder of the type approval was required to produce the information needed to develop an SSID within two years of being requested to do so by Transport Canada and the operator of the aircraft was required to implement the SSID within six months of its becoming available. Neither CAR 511.34 nor the associated standard will establish defined time periods for development or implementation of an SSID. However, the intent of the AMA remains unchanged. The operator of an aeroplane which has reached the end of its design life may not continue to operate that aeroplane without following the necessary inspection procedure.

Contact: Chief, Regulatory Affairs (MRBH), Transport Canada Safety and Security, Place de Ville, Tower "C", Ottawa, Ontario K1A ON8. Tel: 613-993-7284 or 1-800-3052059; Fax: 613-990-1198.

Exempt from Pre-Publication and Approved

Statutory Authority & Regulatory Plan Listing

Order Terminating the Administration, Management and Control by the Canada Ports Corporation of the Harbour of Churchill (SOR/97-428, OIC 1997-1256)

The Order terminates the administration by the Canada Ports Corporation of the harbour of Churchill and of related works and property.

The Order is effective September 5, 1997.

Contact: Thomas E. Gallagher, Senior Counsel, Common Law, Canada Ports Corporation, 99 Metcalfe Street, Ottawa, Ontario, K1A 0N6. Tel: 613-957-6726.

Canada Ports Corporation Act, paragraph 34(1)(b)

Not included in Regulatory Plan

To be published in Canada Gazette September 17, 1997

Exempt from Pre-Publication and Approved

Statutory Authority & Regulatory Plan Listing

Canadian Wheat Board Regulations, amendment (SOR/97-431, OIC 1997-1272)

This amendment establishes a higher initial payment for the base grades of wheat (an increase of $20 per metric tonne), amber durum wheat (an increase of $41 per metric tonne), barley (an increase of $16 per metric tonne), and designated barley (an increase of $14 per metric tonne) for the 1997-98 crop year. The higher initial payments could increase payments to farmers by some $450-million.

Contact: Craig Fulton, Commerce Officer, Grains and Oilseeds Division, International Markets Bureau, Market and Industry Services Branch, Agriculture and Agri-Food Canada, Sir John Carling Building, 930 Carling Avenue, Ottawa, Ontario, K1A 0C5. Tel: 613-759-7698; Fax: 613-759-7499.

Canadian Wheat Board Act, subparagraph 32(1)(b)(i), subsection 47(2) and section 61

Not included in Regulatory Plan

To be published in Canada Gazette October 1, 1997

Ministerial Orders Approved

Statutory Authority & Regulatory Plan Listing

Exemption Order No. 1, 1997 (Sending of Notices and Documents) (SOR/97-429)

The Order exempts persons from filing requirements for designated notices and documents where the person is already required by specified provincial legislation to file a notice or document containing similar information.

The exempt notices and documents set out under Part A of the Schedule are:

- insider report under section 127 of the *Canada Business Corporations Act*;
- interim financial statements under section 160;
- prospectus under section 193;
- statement of material facts under section 193;
- registration statement under section 193; and
- news release under section 193.

Part B sets out provincial legislation covered by the Order, including Securities Acts for Ontario, Quebec, Nova Scotia, Manitoba, Prince Edward Island, Alberta, Newfoundland, Yukon Territory, and Northwest Territories, as well as the *Security Frauds Prevention Act* of New Brunswick.

The Order comes into effect on September 5, 1997.

Contact: Caroline P. Melia, Senior Compliance Policy Advisor, Corporations Directorate, Industry Canada, 9th floor, Jean Edmonds Tower South, 365 Laurier Avenue West, Ottawa, Ontario. Tel: 613-941-5755; Fax: 613-941-5781.

Canada Business Corporations Act, section 258.2

Not included in Regulatory Plan

To be published in Canada Gazette September 17, 1997

Canadian Turkey Marketing Quota Regulations, 1990, amendment (SOR/97-432)

The amendment revises the limitations to be applied when determining the market allotment of a producer or when issuing a new market allotment within a province during the control period beginning May 1, 1997 and ending April 30, 1998.

For the period, the allotment (in pounds of turkey) set out in the Schedule to the Regulations is as follows: for Ontario, 120,225,461 pounds; for Quebec, 62,206,271; for Nova Scotia, 7,800,148; for New Brunswick, 5,377,462; for Manitoba, 20,358,366; for British Columbia, 32,137,036; for Saskatchewan, 10,367,081; and for Alberta, 24,332,325.

The Order comes into effect on September 11, 1997.

Farm Products Agencies Act, paragraph 22(1)(f); *Canadian Turkey Marketing Agency Proclamation*, section 2, Part II

Not included in Regulatory Plan

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