

Every competitive advantage

Legislative changes ensure Alberta is the destination-of-choice for businesses

What we've done...

We want Alberta businesses to have every competitive advantage possible. Over the past two years, business and legal experts across Alberta told us changes were needed to better enable businesses to succeed.

Service Alberta has amended the *Business Corporations Act* (BCA) to ensure that when innovators, entrepreneurs, and job-creators are considering where to incorporate, invest, and operate, they consider Alberta first.

Here are some of the changes we've made:

➤ **Clarified directors' responsibilities and protections**

We've made it easier for directors to carry out their important roles in corporations. Before, directors were required to disclose and abstain from voting where they have a material interest in any contracts or transactions.

With the changes we have made, directors will be able to vote on agreements in which the director may have a material interest, but where the director's interest would benefit the corporation, such as guaranteeing a loan. We have also expanded circumstances of the good faith defense, enhanced provisions covering indemnification (i.e. compensation for harm or loss), and clarified the scope of directors' duty of care.

These changes will help us to attract the best and brightest directors to Alberta and reflect the way that modern corporations operate.

➤ **Expanded corporate opportunities for directors, officers**

Corporations now have the option of adding waivers into their Articles of Incorporation or a Unanimous Shareholder Agreement to allow directors to participate in specific types of corporate opportunities. This is particularly useful for venture capital investors, who choose to invest in corporations in the same lines of business. Large investors frequently have diverse portfolios and sit on the boards of corporations they have invested in to ensure their ongoing performance.

A large private equity firm may be reluctant to invest in a company if it means they will never be able to invest in another similar venture in the future. Allowing corporate opportunity waivers puts Alberta on the leading edge of modernized corporate legislation in the country.

➤ **Provided a larger timeframe for dissolved corporations to get back into business**

Sometimes, after a corporation dissolves, it is reactivated (or "revived") to go back into business, collect assets, or work through legal issues. Before our changes, a corporation could only revive within five years of dissolving. Our amendments extend this timeframe by allowing them to revive within 10 years of dissolution, reducing administrative burdens on corporations between that 5-10 year period. Further amendments to our other related legislation have removed the current five-year revival period for non-profit companies, societies, and cooperatives altogether.

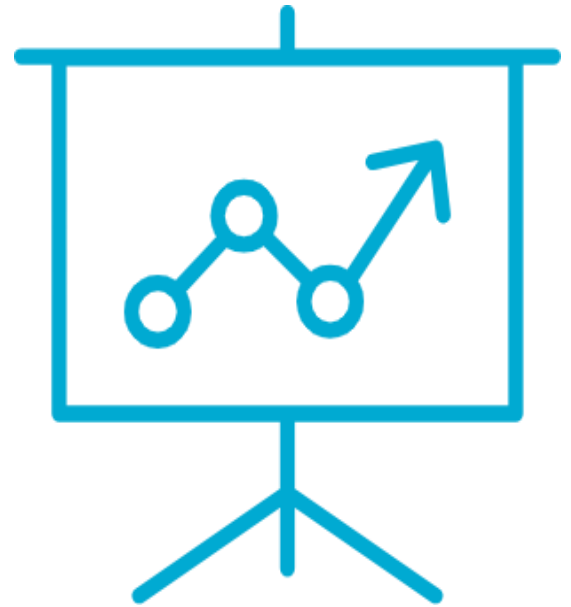
It's all now in effect!

The changes we've made to the *Business Corporations Act*, and the *Business Corporations Regulation*, came into effect on May 31, 2022.

➤ **Reduced administrative burdens around approvals**

A decision of a majority of shareholders can sometimes be held up by the vote of one shareholder. Our amendments changed the shareholder approval threshold to two-thirds from a unanimous approval in the following carefully-chosen situations where unanimity is not necessary:

- if a two-thirds majority of shareholders agree to waiving the requirement of audited financial statements of privately-held, non-distributing corporations; and
- when passing a written resolution signed by a two-thirds majority of shareholders, instead of holding a shareholder meeting.



For more information, look for the *Business Corporations Act* page on alberta.ca.

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➤ **Provided corporations an exception to use United States-based accounting principles**

A change to the Business Corporations Regulation provides an exception for a distributing corporation that is subject to applicable generally accepted accounting standards in the United States from preparing additional financial records using Canadian generally accepted accounting principles when filing annual returns and presenting annual financial statements for their Alberta corporation. This reduces the administrative burden for distributing corporations that would otherwise be required to prepare two sets of financial statements using different accounting principles.

➤ **Matched advantages found in similar federal and Ontario legislation**

Incorporating in Ontario, or federally, was often the first choice for many businesses. With our amendments, Alberta now aligns with some provisions in Ontario's *Business Corporations Act* and *Canada Business Corporations Act* to make Alberta a more attractive place to incorporate.

For example, we have aligned with both Ontario and the federal government by allowing shareholders, while acting as directors, to "fetter their discretion" (rely on the advice of others or written reports when making decisions).

➤ **Repealed provisions that were repetitive, unnecessary, or addressed by other legislation**

- We simplified processes for corporations by removing redundant or out-of-date requirements, amending provisions to match modern communication methods, and modernizing the meaning of "contact information";
- We provided more flexibility in seeking advice on financial statements and other documents; and
- We removed references in legislation that require faxed or handwritten documents.



Our goal: Making Alberta the best place in Canada to do business

We want to aid our economic recovery by attracting job creators to Alberta. A number of our changes have made Alberta's business legislation a leader in Canada:

- Alberta now allows the most flexibility for directors voting on agreements in which they may have a material interest, but benefit a corporation (such as guaranteeing a loan).
- Alberta is the first in Canada to introduce corporate opportunity waivers (see above).
- Alberta is the first in Canada to clarify its legislation regarding court-approved arrangements.

Helping us reach our goal:

From July 2020 to September 2021, Service Alberta reached out to more than 200 experts to find out how we can help businesses succeed in Alberta. These experts included Chambers of Commerce, business leaders, legal and academic communities, accounting firms, the banking industry, and the Alberta Securities Commission, as well as colleagues in other government ministries who work with corporations.