



## LEGISLATIVE SUMMARY



### **Bill C-25:**

## **An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act**

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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*Legislative Summary of Bill C-25*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-25: AN ACT TO AMEND THE CANADA BUSINESS CORPORATIONS ACT, THE CANADA COOPERATIVES ACT, THE CANADA NOT-FOR-PROFIT CORPORATIONS ACT, AND THE COMPETITION ACT

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## 1 BACKGROUND

Bill C-25, An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act,<sup>1</sup> was introduced in the House of Commons on 28 September 2016 on behalf of the Minister of Innovation, Science and Economic Development.

The bill amends Canada's primary legislation governing federally regulated commercial entities, including corporations, cooperatives and not-for-profit organizations. It aims to reduce regulatory burdens to enhance shareholder democracy and participation, diversity and women's representation on corporate boards and in management positions, and to improve corporate transparency and business certainty.

Industry Canada (now Innovation, Science and Economic Development Canada) undertook a consultation process in 2014<sup>2</sup> on the *Canada Business Corporations Act*<sup>3</sup> with a view to ensuring that the governance framework for federally incorporated businesses remained effective. Bill C-25 addresses many topics discussed during the consultation process, which concluded on 15 May 2014, including diversity on the corporate boards and management teams of Canadian corporations, and shareholder voting and participation rights.

Amendments to the bill were introduced by the Standing Senate Committee on Banking, Trade and Commerce and were subsequently passed by Parliament; in particular, these amendments addressed the length of time incumbent directors of corporations and cooperatives who are not re-elected can remain in their posts, and how corporate diversity disclosures are circulated to shareholders.<sup>4</sup>

Bill C-25 received Royal Assent on 1 May 2018.

## 2 DESCRIPTION AND ANALYSIS

Bill C-25 primarily amends the election procedures and communication requirements of the following three Acts, all of which regulate different types of corporate structures in Canada:

- the *Canada Business Corporations Act*, which regulates Canadian businesses that have incorporated federally;

- the *Canada Cooperatives Act*,<sup>5</sup> which regulates businesses that have incorporated, or are attempting to incorporate, federally and that operate as cooperatives; and
- the *Canada Not-for-profit Corporations Act*,<sup>6</sup> which regulates businesses that have incorporated, or are attempting to incorporate, federally and that operate as not-for-profit organizations.

Bill C-25 also amends some of the ways in which Canadian businesses are affiliated under the *Competition Act*,<sup>7</sup> which regulates the conduct of business in Canada. The Act contains both criminal and civil provisions aimed at preventing anticompetitive practices in the Canadian marketplace.

## 2.1 AMENDMENTS TO THE CORPORATE GOVERNANCE PROVISIONS OF TWO OR MORE OF THE ACTS

### 2.1.1 INCAPABLE PERSONS

Bill C-25 amends the *Canada Business Corporations Act*, the *Canada Cooperatives Act* and the *Canada Not-for-profit Corporations Act* to replace the terms “unsound mind” and “incompetent” with the term “incapable.”

These amendments clarify the status of individuals who may incorporate a business, sign corporate documents or act as a director; in particular, an individual deemed “incapable” may not perform such duties.

The amendments are found in the following provisions:

- clauses 1, 2, 9, 11 and 12, which amend sections 2(1), 5(2), 51(2)(b), 65(1)(d) and 105(1)(b), respectively, of the *Canada Business Corporations Act*;
- clauses 47, 48, 58, 66 and 68, which amend sections 2(1), 8(2), 78(1)(c), 190(a) and 221(1)(d), respectively, of the *Canada Cooperatives Act*; and
- clauses 96, 97, 99 and 100, which amend sections 2(1), 6(2), 78(1)(d) and 126(1)(b), respectively, of the *Canada Not-for-profit Corporations Act*.

### 2.1.2 BEARER INSTRUMENTS

Bill C-25 amends the *Canada Business Corporations Act* and the *Canada Cooperatives Act* to clarify that bearer shares, bearer certificates and bearer share warrants are prohibited.<sup>8</sup> Shareholders or cooperative members have the opportunity to convert existing bearer instruments into a registered form of security, such as a common share.

The amendments are found in the following provisions:

- clauses 7, 8, 10 and 25, which amend sections 29, 49(15), 54 and 187(8) to 187(9), respectively, of the *Canada Business Corporations Act*; and
- clauses 61, 65, 72(2) and 72(3), which amend sections 142, 185(1), 285(12) and 285(13), respectively, of the *Canada Cooperatives Act*.

### 2.1.3 CORPORATE NAMES

Bill C-25 amends the *Canada Business Corporations Act*, the *Canada Cooperatives Act* and the *Canada Not-for-profit Corporations Act* to clarify the provisions relating to reserving a desired name that a corporation intends to adopt; prohibiting certain corporate names under prescribed regulations;<sup>9</sup> and the manner in which prohibited corporate names are changed or revoked.

These amendments provide that the regulations made pursuant to the three Acts mentioned above may prescribe the period that the corporate name may be reserved, specific prohibitions regarding corporate names, and administrative deadlines regarding the changing or revoking of a corporation's name.

The amendments are found in the following provisions:

- clauses 3 and 4, which amend sections 11(1) and 12(1) to 12(2) of the *Canada Business Corporations Act*;
- clauses 52 and 53(1), which amend sections 22, 23, 24(1) and 24(2) of the *Canada Cooperatives Act*; and
- clause 98, which amends section 12(1) of the *Canada Not-for-profit Corporations Act*.

Bill C-25 also amends the *Canada Business Corporations Act*, the *Canada Cooperatives Act* and the *Canada Not-for-profit Corporations Act* to allow certain aspects of corporate practices to be addressed within the regulations, including the following:

- the deadline by which registered holders or beneficial owners of shares are entitled to submit proposals to make, amend or repeal a by-law;
- the documents that an intermediary – a broker, a bank or a financial adviser who assists in the managing of shares – must receive in order to vote at a shareholder's meeting;
- the form and content of financial statements, disclosures and other documents that the directors must provide to shareholders at every annual meeting, as well as the time periods for the delivery of those documents; and
- the length of time that a director, or a former director of a dissolved corporation, must retain copies of corporate documents.

The amendments are found in the following provisions:

- clauses 15, 19, 20, 22 and 32, which amend sections 137(5)(a), 153(1), 155(1), 159(1) and 225(1), respectively, of the *Canada Business Corporations Act*;
- clauses 63, 69, 71, 83 and 95(4), which amend sections 169(1), 247(1), 251, 325 and 378(3), respectively, of the *Canada Cooperatives Act*; and
- clause 106(2), which amends section 283(3) of the *Canada Not-for-profit Corporations Act*.

#### 2.1.4 TRANSMISSION AND RETENTION OF CORPORATE DOCUMENTS

Canada's securities regulators permit publicly traded corporations to post certain shareholder communications to the System for Electronic Document Analysis and Retrieval as an alternative to mailing those communications to shareholders. Under "notice and access" rules established or adopted by the Canadian securities' regulators, publicly traded corporations can use the Internet to provide meeting materials to security holders, such as shareholders. These rules also allow corporations to deliver materials to security holders in a simpler, abbreviated form rather than in the traditional paper "proxy package" form. However, administrative restrictions have limited the ability of businesses incorporated under the *Canada Business Corporations Act* to use these "notice and access" rules.

Bill C-25 amends the *Canada Business Corporations Act* and the *Canada Cooperatives Act* to remove restrictions requiring the use of paper materials, and to allow publicly traded corporations to use the Internet to provide meeting materials to security holders. The bill also amends these Acts to clarify the manner in which a director must retain documents, the documents that may be exempted from disclosure to shareholders and the format of documents issued by a director. In particular, the bill specifies that a director is able to:

- retain specified documents in whatever form the director chooses;
- determine the format of the documents that the director receives or issues, including whether they can be submitted or delivered electronically or otherwise;
- determine whether electronic signatures are acceptable; and
- specify the person who may sign or transmit corporate documents.

The amendments are found in the following provisions:

- clauses 36(1) and 45, which amend sections 258.1, 267(1), 267(2), 267(2)(b) and 267(3) of the *Canada Business Corporations Act*; and
- clauses 70, 87 and 95(1), which amend sections 248, 368(2), 368(3) and 378(1) of the *Canada Cooperatives Act*.

#### 2.1.5 ELECTION AND APPOINTMENT OF DIRECTORS

The election of directors of publicly traded corporations in Canada formerly operated under a "plurality system," whereby shareholders were permitted either to vote "for" or to "withhold" their vote. Under this system, a director required only a single "for" vote in order to be elected, regardless of the number of "withhold" votes cast.

In 2014, the Toronto Stock Exchange (TSX) announced amendments to the *TSX Company Manual*<sup>10</sup> that required all TSX-listed corporations – except those that are majority-controlled – to adopt a "majority voting" policy. Under such a policy, directors who receive a majority of "withhold" votes for an uncontested position must submit their resignation to the board of directors; the board may then accept or reject the resignation, at its discretion. While this rule is a standard that the TSX has adopted, the TSX is able to change this rule at any time.



For many years, publicly traded corporations in Canada practised “slate voting,” whereby director elections were limited either to voting “for” or to “withholding” a vote for a slate of nominees. In 2012, “individual voting, whereby shareholders may vote for each nominee separately,” became mandatory for TSX-listed corporations.

Prior to 2012, the *Canada Business Corporations Act* allowed directors to be elected for a three-year term. However, since that time, the TSX has required TSX-listed corporations to adhere to a one-year term of office.

Bill C-25 amends the *Canada Business Corporations Act* and the *Canada Cooperatives Act* to reform the voting and appointment process for directors. The bill requires publicly traded, federally incorporated businesses to do the following:

- hold annual elections for directors;
- use majority voting for uncontested director elections;
- allow shareholders to vote “for” or “against” proposed directors when the election is uncontested;
- elect directors individually unless prescribed otherwise by regulation;<sup>11</sup>
- set a term limit of three years for directors of a non-distributing corporation;<sup>12</sup> and
- set a term limit of one year for directors of a distributing corporation.

The amendments are found in the following provisions:

- clause 13, which amends sections 106(3) and 106(3.1) to 106(3.4) of the *Canada Business Corporations Act*; and
- clauses 59(1) and 60, which amend sections 83 and 84, respectively, of the *Canada Cooperatives Act*.

#### 2.1.6 FEES

Bill C-25 amends the *Canada Business Corporations Act* and the *Canada Cooperatives Act* to clarify the time at which, and the manner in which, a director may charge and collect fees for the receipt, copying, examination and/or issuance of any document, as well as for any other action that the director is authorized to take. The bill requires that the director be paid before undertaking any of these actions. As well, it clarifies that the Governor in Council may make regulations regarding the amount of such fees and the manner in which they are determined.

The amendments are found in the following provisions:

- clause 39, which amends section 261.1 of the *Canada Business Corporations Act*; and
- clauses 89(1) and 90, which amend sections 372(1)(c) and 372.1, respectively, of the *Canada Cooperatives Act*.

### 2.1.7 QUEBEC CONTRACTS

Bill C-25 amends the *Canada Business Corporations Act* and the *Canada Cooperatives Act* to clarify that a “contract for gratuitous title” made in Quebec is not considered to be a “contract” for the purposes of the definition of “interested persons” who hold a contract with a dissolved corporation.

In Quebec, a “contract for gratuitous title” is a written document declaring that a gift is being made from one party to another party; under the province’s civil law, it is considered a “contract.” Elsewhere in Canada, a document declaring that a gift is being made does not constitute a contract; under common law, a contract requires the exchange of some item or benefit for another item or benefit, such as the exchange of money for services.

The amendments are found in the following provisions:

- clause 28(7), which amends section 209(6)(b) of the *Canada Business Corporations Act*; and
- clause 78(4), which amends section 308(8)(b) of the *Canada Cooperatives Act*.

### 2.1.8 FILING OF ARTICLES AND STATEMENTS

Bill C-25 amends the *Canada Business Corporations Act* and the *Canada Cooperatives Act* to remove the requirement for a director or officer to sign the corporation’s articles, or a statement relating to the corporation, prior to sending the articles or statement to the Director of Corporations Canada (the Director). The bill also removes the requirement for the Director to file certain documents after their receipt, such as a certificate issued in response to a statement sent by a director of the corporation.

The amendments are found in the following provisions:

- clause 40, which amends section 262(2) of the *Canada Business Corporations Act*; and
- clause 91, which amends section 373(2) of the *Canada Cooperatives Act*.

### 2.1.9 DIRECTOR EXEMPTIONS

Formerly, the Director could waive statutory requirements to produce or deliver financial statements to shareholders or the general public on reasonable grounds and on any reasonable condition that the Director considered appropriate. Bill C-25 amends the *Canada Business Corporations Act* and the *Canada Cooperatives Act* to clarify the documents that the Director may exempt from the statutory requirements to disclose to a corporation’s shareholders or the general public.

In particular, on application by a federally incorporated business, the Director may now waive the statutory requirements to produce or deliver financial statements to shareholders – or, in the case of a distributing corporation, the general public – if the

detriment to the corporation arising from such a disclosure would exceed the benefit to shareholders or the general public.

The amendments are found in the following provisions:

- clauses 18, 21 and 37, which amend sections 151(1), 151(2), 156 and 258.2 of the *Canada Business Corporations Act*.

In circumstances to be prescribed by regulation and on the application of any interested person, the Director may exempt the management of a federally incorporated cooperative from doing the following:

- sending a notice of shareholder meetings;
- sending a form of proxy to shareholders for voting at shareholder meetings;<sup>13</sup>
- soliciting proxy votes;
- sending financial statements and auditor reports to shareholders; and
- requiring an intermediary to issue required documents to the beneficial owners of their shares prior to voting on their behalf.

The amendments are found in the following provisions:

- clauses 62(1), 63 and 88, which amend sections 167(1) and 169(1) of and add section 369.1 to the *Canada Cooperatives Act*.

#### 2.1.10 POWER TO MAKE REGULATIONS

Bill C-25 removes the Governor in Council's authority to make regulations concerning the standards that accounting bodies must follow when preparing the financial statements of corporations.

The bill gives the Governor in Council the authority to make regulations concerning the powers that a shareholder may grant in the form of a proxy.

The amendments are found in the following provisions:

- clause 38(4), which amends section 261(1)(f) of the *Canada Business Corporations Act*; and
- clause 89(3), which amends section 372(1)(f) of the *Canada Cooperatives Act*.

## 2.2 AMENDMENTS TO A SPECIFIC ACT

### 2.2.1 CANADA BUSINESS CORPORATIONS ACT

#### 2.2.1.1 DIVERSITY

In 2014, some provincial securities regulators began requiring TSX-listed corporations to provide annual reports on their approach to fostering gender diversity on their boards of directors and among their executive officers.

Bill C-25 amends the *Canada Business Corporations Act* to require a distributing federally incorporated business to make disclosures about the diversity of its board of directors and among its management. Directors are required to provide the shareholders with information explaining the reasons for the lack of a disclosure. These disclosures are to be sent to shareholders and to the Director at the same time that the notice of a shareholder meeting is sent. The required content of these disclosures will be set out in forthcoming regulations.<sup>14</sup>

The amendment is found in the following provision:

- clause 24, which adds section 172.1 to the *Canada Business Corporations Act*.

#### 2.2.1.2 AUTHORITY TO SIGN NOTICES

Bill C-25 amends the *Canada Business Corporations Act* to remove the option for individuals authorized by the director with relevant knowledge of a corporation – or the incorporators of the business – to sign the corporation’s various outgoing notifications and annual financial returns.

The amendment is found in the following provision:

- clause 41, which repeals section 262.1(2) of the *Canada Business Corporations Act*.

#### 2.2.1.3 PUBLICATION

Bill C-25 amends the *Canada Business Corporations Act* to introduce a requirement for the Director to publish, in a publication that is generally available to the public, a notice of any Director’s decision granting an application that has been made by the corporation for it do the following:

- determine that it is not, or was not, a distributing corporation or cooperative;
- exempt it from the use of “Limited,” “Limitée,” “Incorporated,” “Incorporée,” “Corporation” or “Société par actions de régime fédéral,” or the corresponding abbreviations “Ltd.,” “Ltée,” “Inc.,” “Corp.” or “S.A.R.F.,” in its name;
- exempt it from the requirements of Part VIII of the Act (Trust Indentures) with respect to a trust indenture and/or any debt obligations issued under the indenture, as well as any security interest effected by the indenture;<sup>15</sup>

- exempt it from the requirement to send a notice of shareholder meetings;
- exempt it from the requirement to send a form of proxy to shareholders for voting at a shareholder meeting to which the proxy applies;
- exempt it from the requirement to solicit proxy votes;
- exempt it from sending financial statements and auditor's reports to shareholders;
- exempt an intermediary from the requirement to issue the required documents to the beneficial owners of their shares prior to voting on behalf of these beneficial owners; and
- permit it to continue to refer to its shares as having a nominal or par value in its articles when it is continued under the Act, it no longer issues nominal or par value shares, and finds that it is not practicable to change the reference from being that of nominal or par value.

The amendment is found in the following provision:

- clause 42, which adds section 262.2 and amends section 263 of the *Canada Business Corporations Act*.

## 2.2.2 CANADA COOPERATIVES ACT

### 2.2.2.1 DECLARATIONS

Declarations are written affirmations of facts. They are signed by an individual who is declaring that, to the best of the individual's knowledge, the facts are true.

Bill C-25 amends the *Canada Cooperatives Act* so that the use of "declarations" in relation to the administrative activities of cooperatives in Canada is no longer required. In particular, the requirement for the use of declarations in the following circumstances is discontinued:

- an application for incorporation;
- the issuance of a certificate of incorporation;
- the issuance of, or an application for, articles of continuance;<sup>16</sup>
- the documentation that corresponds to a cooperative's articles of amendment;<sup>17</sup>  
and
- the revival of a dissolved cooperative.

The amendments are found in the following provisions:

- clauses 49, 51, 72(1), 73, 74, 75, 78(1), 78(3) and 86, which amend sections 10, 12(2), 285(4) to 285(7), 287(1), 291(1), 292, 308(1) to 308(2), 308(4) to 308(5) and 367(1) to 367(3) of the *Canada Cooperatives Act*.

#### 2.2.2.2 DIRECTOR INFORMATION AND SIGNATURE

Bill C-25 amends the *Canada Cooperatives Act* to remove the requirement to include the name and residence of each of the incorporators of a cooperative within the articles of incorporation. It also removes the requirement for the incorporators to sign these articles.

The amendment is found in the following provision:

- clause 50, which repeals sections 11(1)(c) and 11(5) of the *Canada Cooperatives Act*.

#### 2.2.2.3 PUBLICATION OF NAME CHANGE

Bill C-25 amends the *Canada Cooperatives Act* to clarify that, upon changing the name of a cooperative, a director must undertake two actions: issue a certificate of amendment detailing the new name; and publish, in a publication that is generally available to the public, a notice indicating the new name.

The amendment is found in the following provision:

- clause 54, which adds section 24.1 to the *Canada Cooperatives Act*.

#### 2.2.2.4 SPECIFIC COOPERATIVES

Bill C-25 amends the *Canada Cooperatives Act* to simplify the administrative requirements for amalgamating cooperatives, and to remove the specific administrative measures applicable to the declarations of “non-profit housing cooperatives” and “worker cooperatives.”

The amendment is found in the following provision:

- clause 76, which amends section 299(2) of the *Canada Cooperatives Act*.

#### 2.2.2.5 PUBLICATION

Bill C-25 amends the *Canada Cooperatives Act* to clarify that a director must publish, in a publication that is generally available to the public, a notice of any decision that the director has made granting an application in the following circumstances:

- determining that the cooperative is not, or was not, a distributing cooperative;
- exempting the cooperative from the requirements of Part 14 of the Act (Trust Indentures) with respect to a trust indenture and/or any debt obligations issued under the indenture, as well as any security interest affected by the indenture;
- exempting the cooperative from the requirement to send a form of proxy to shareholders for voting at a shareholder’s meeting to which the proxy applies;
- exempting the cooperative from the requirement to solicit proxy votes;

- exempting the cooperative from the requirement to send financial statements and auditor reports to shareholders;
- exempting the cooperative from the requirement to have an audit committee comprising not fewer than three directors, a majority of whom are not full-time officers or employees of either the cooperative or any of its affiliates; and
- permitting the cooperative to continue to refer to its shares as having a nominal or par value in its articles when it is continued under the Act and no longer issues nominal or par value shares, and when it is not practicable to change the reference from being that of nominal or par value.

The amendment is found in the following provision:

- clause 92, which amends section 374 of the *Canada Cooperatives Act*.

### 2.2.3 CANADA NOT-FOR-PROFIT CORPORATIONS ACT

Bill C-25 amends the *Canada Not-for-profit Corporations Act* to clarify that the Director must publish, in a publication that is generally available to the public, a notice of any decision that the Director has made granting an application in the following circumstances:

- determining that, for the purposes of the Act, the not-for-profit corporation is not, or was not, a soliciting corporation;
- exempting the not-for-profit corporation from the requirements of Part 7 of the Act (Trust Indentures) with respect to a trust indenture and/or any debt obligations issued under the indenture, as well as any security interest affected by the indenture;
- extending the time for the calling of an annual meeting;
- authorizing the not-for-profit corporation to give notice of the annual meeting to members of the not-for-profit corporation;
- authorizing the not-for-profit corporation to permit its members to vote by any method;
- exempting the not-for-profit corporation from issuing – to the members at an annual meeting – financial statements, a report of the public accountant and/or any other financial documentation required by its articles, by-laws or any unanimous member agreement;
- deeming the not-for-profit corporation to have revenue equal to the prescribed amounts designating it as a soliciting or non-soliciting corporation under section 179 of the Act or, if it is not a designated corporation under section 179 of the Act, revenue that does not exceed the amount prescribed in section 189(2); and
- exempting – retroactively or otherwise – the not-for-profit corporation from complying with any requirements of Part 17 (Documents in Electronic or Other Form) of the Act if the Director reasonably believes that the members of the not-for-profit corporation will not be prejudiced by the exemption.

The amendments are found in the following provision:

- clause 103, which adds section 277.1 to the *Canada Not-for-profit Corporations Act*.

#### 2.2.4 COMPETITION ACT

Bill C-25 broadens the affiliation rules under the *Competition Act* to include a greater range of business structures. The structures include partnerships, sole proprietorships, trusts and unincorporated businesses (hereafter, collectively referred to as “entities”). The treatment of these entities is aligned with the treatment of corporations under the Act. Bill C-25 does the following:

- aligns the manner in which control over affiliated entities and over affiliated corporations is established;
- aligns the treatment of these entities with that of corporations in relation to price maintenance orders,<sup>18</sup> bid-rigging,<sup>19</sup> exclusive dealing,<sup>20</sup> market restriction,<sup>21</sup> tied selling<sup>22</sup> and arrangements that substantially prevent or lessen competition;
- introduces the term “equity interest” as either corporate shares or an interest in an entity that entitles its holder to the entity’s profits, or assets on dissolution;
- introduces the manner in which equity interests may be acquired, and aligns the treatment of equity shares in entities with that of voting shares in corporations;
- amends the rules governing the acquisition of voting shares of a corporation that owns or controls another corporation in order to include a corporation that owns or controls another entity; and
- broadens the concepts and corresponding treatment of “amalgamation” and “combination” to include the aforementioned entities.

The amendments are found in the following provisions:

- clauses 109(1), 109(2), 109(3) and 109(4), which amend sections 2(1), 2(2), 2(3), 2(4)(a) and 2(4)(c) of the *Competition Act*;
- clauses 110, 111, 112, 113(1) and 113(2), which amend sections 45(6)(a), 47(3), 76(4), 77(4) and 77(5), respectively, of the *Competition Act*;
- clauses 114, 115, 116(1), 116(2), 116(3) and 117, which amend sections 79.1, 90.1(7), 108(1), 108(2) and 109(2) of the *Competition Act*;
- clauses 118(1), 118(2), 118(3), 118(4) and 119, which amend sections 110(3), 110(4), 110(4.1), 110(5) and 111(f), respectively, of the *Competition Act*; and
- clauses 120(1), 120(2), 121, 122, 123 and 124, which amend sections 114(1)(b), 114(3), 116, 117(1), 118 and 123(2) and 123(3) of the *Competition Act*.

#### 2.3 CONSEQUENTIAL AMENDMENTS

Bill C-25 also makes a number of consequential amendments to the *Canada Business Corporations Act*, the *Canada Cooperatives Act* and the *Canada Not-for-profit Corporations Act* to improve the alignment of the English and French versions



of these Acts, to modernize or otherwise improve existing language, or to update or add a new reference to a provision number changed by Bill C-25.

Clauses 5, 6, 14, 26, 29, 30, 33, 34, 35, 43 and 46 amend sections 13, 19(2), 126(1), 193, 212(2)(b), 213(4)(b), 235(3), 237.7(4), 252.5(3), 265(8) and 267.1, respectively, of the French version of the *Canada Business Corporations Act*.

Clauses 55, 64, 79, 80, 81, 82, 84, 85, 89(2) and 93 amend sections 30(2), 171(1), 311(2)(b), 312(4)(b), 315(4)(a), 320(b), 335(4), 337.7(4), 372(1)(d) and 376.1(8), respectively, of the French version of the *Canada Cooperatives Act*.

Clauses 16, 17, 23, 27, 28(1), 28(2) to 28(4), 28(5), 28(6), 31, 36(1), 36(2) to 36(5), 38(1) and 38(3) amend sections 138(3), 150(1) and 150(2), 161(2)(b), 208, 209(1), 209(3), 209(3)(a), 209(3)(b), 209(3.1), 209(4), 221(e), 258.1, 258.1(b) to 258.1(e), 261(1)(a) and 261(1)(c) of the *Canada Business Corporations Act*.

Clauses 56, 57, 67, 77, 78(2) and 94 amend sections 58(4)(a), 61(5), 199(2), 307, 308(3)(a) and 377, respectively, of the *Canada Cooperatives Act*.

Clauses 101, 102, 104, 105, 106(1) and 107 amend sections 128(7), 238, 279(1) to 279(2), 282, 283(1) and 293(1)(a), respectively, of the *Canada Not-for-profit Corporations Act*.

## 2.4 COMING INTO FORCE

Most sections of Bill C-25 come into force on Royal Assent. However, clause 108 provides for the following provisions to come into force on other days, to be fixed by order of the Governor in Council:

- the provisions created or amended by clauses 3, 4 and 52 to 54, which amend the reserving, revocation, changing and prohibition of corporate and cooperative names;
- the provisions created or amended by clauses 13, 59 and 60, which amend the requirements for the voting for – and election of – directors, and the term limits of the directors of cooperatives;
- the provisions created or amended by clauses 15 and 56, which amend the deadlines by which proposals must be submitted to the corporation or cooperative;
- the provisions created or amended by clauses 17, 19, 22, 37, 63, 71 and 88, which address the solicitation of proxies, the timing and content of documents to be delivered by the intermediary of a beneficial owner, the timing and content of the financial disclosure as prescribed by regulations, and the power of the Director to exempt a corporation or cooperative from the requirements to disclose certain documents;
- clause 24, which implements new diversity requirements; and
- for corporations, cooperatives and not-for-profit organizations, the provisions created or amended by clauses 32, 44, 45, 83, 94, 95(1) to 95(4), 102, 104(1) to 104(3) and 106, which amend the custody, keeping, examination and copying of documents.

NOTES

1. [Bill C-25, An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. Government of Canada, [Consultation on the Canada Business Corporations Act](#).
3. [Canada Business Corporations Act](#), R.S.C. 1985, c. C-44.
4. Senate, Standing Committee on Banking, Trade and Commerce, [Nineteenth Report](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 14 December 2017.
5. [Canada Cooperatives Act](#), S.C. 1998, c. 1.
6. [Canada Not-for-profit Corporations Act](#), S.C. 2009, c. 23.
7. [Competition Act](#), R.S.C. 1985, c. C-34.
8. The ownership of bearer shares, bearer certificates and bearer share warrants is not registered with the relevant corporation, and these instruments exist only as a physical document. The [Financial Action Task Force](#) and the [Global Forum on Transparency and Exchange of Information for Tax Purposes](#) have identified bearer instruments as vehicles for laundering money and financing terrorism.
9. See [Canada Business Corporations Regulations, 2001](#), SOR/2001-512, ss. 18–32.
10. Toronto Stock Exchange, [TSX Company Manual](#).
11. The departmental backgrounder for Bill C-25 (Government of Canada, “[An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act](#),” Backgrounder) indicates that publicly traded corporations and cooperatives are subject to the “individual voting” rule.
12. A distributing corporation offers shares to the public and reports to a provincial securities commission. A non-distributing corporation is any corporation that falls outside this definition.
13. A “form of proxy” is a written or printed form that, on completion and execution – or, in Quebec, on signing by or on behalf of a shareholder – becomes a proxy. A proxy enables an appointed proxy-holder to attend a shareholder’s meeting, and to act on the shareholder’s behalf.
14. The departmental [backgrounder](#) for Bill C-25 notes that it is the federal government’s intention to require publicly traded corporations to disclose the gender composition of their board of directors and their senior managers, as well as their diversity policies. If no such policies exist, the reasons for their absence must be explained.
15. A “trust indenture” is a deed, indenture or debt obligation in which a person is appointed as trustee for the holders of the debt obligations.
16. Articles of continuance transfer the jurisdiction of a corporation, or the area in which it may carry on its business activities, to another jurisdiction.
17. Articles of amendment effect and formalize changes in the previously filed articles of association or articles of incorporation.
18. “Price maintenance” may occur when a supplier uses a threat, promise or agreement to prevent a customer from selling a product at a price that is below a mandated minimum price. It may also occur when a supplier refuses to supply a customer, or otherwise discriminates against him or her, because of the customer’s refusal to adhere to the supplier’s mandated minimum price.

## LEGISLATIVE SUMMARY OF BILL C-25

19. “Bid rigging” can be characterized by the following situations: one or more parties to an agreement agree, or undertake, to refrain from submitting a bid or a tender; one or more parties to an agreement agree, or undertake, to withdraw a bid or tender that has been submitted; or one or more parties to an agreement agree, or undertake, to submit a bid or a tender arrived at by agreement or arrangement between two or more bidders or tenderers.
20. “Exclusive dealing” occurs when a supplier either requires or induces a customer to deal only – or mostly – in certain products.
21. “Market restriction” occurs when a supplier requires a retailer to sell specified products in a defined market. The supplier imposes such a restriction by, for example, penalizing the customer for selling outside that defined market.
22. “Tied selling” occurs when, as a condition of supplying a particular product, a supplier requires or induces a customer to buy a second product as well. It may also occur when the supplier prevents the customer from using a second product with the supplied product.