



CASSELS BROCK
LAWYERS

ACC CANADA
Association of Corporate Counsel
Ontario Chapter



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Caught by the Act

November 12, 2010

Something for each of you



- To make this list, only two criteria had to be present
 - a) a provision of an Act of the federal government or province of Ontario and
 - b) an unsettling result

Section 28 Ontario *FAA*



- Section 28 of the *Financial Administration Act* (Ontario) provides that the obligations of the Ontario government or any of its public entities and Crown agencies in respect of any debt instrument, any guarantee or any agreement which increases the contingent liabilities of Ontario are neither binding nor enforceable against the issuer unless the Minister of Finance approves or issues an order exempting the transaction in question
- The section 28 approval or exemption order is required even if another Ontario Minister has approved or signed the grant, loan or agreement in question

Section 28 Ontario *FAA* continued



- Virtually no one, who should seek or obtain a section 28 approval or exemption order, does so and the Minister has not established any categories of transactions that are automatically exempt
- Examples of affected public entities and Crown agencies include hospitals and other health care facilities, universities (other than those constituted by special Act of the Legislature) and community colleges. The common law definition of Crown agency is broad. All such debt is rated by banks and other lenders on the basis of the sovereign covenant; none of it is enforceable

Section 28 Ontario *FAA* continued



- *Financial Administration Act (Ontario)*
 - *28.(1) Despite any other Act, a ministry or public entity shall not enter into any financial arrangement, financial commitment, guarantee, indemnity or similar transaction that would increase, directly or indirectly, the indebtedness or contingent liabilities of Ontario, or seek the approval of the Lieutenant Governor in Council to enter into any such arrangement, commitment, guarantee, indemnity or transaction, unless ... the ministry or public entity has obtained the written approval of the Minister of Finance*

Section 28 Ontario *FAA* continued



- *Financial Administration Act (Ontario), cont.*
 - *28. (2) A financial arrangement, financial commitment, guarantee, indemnity or similar transaction that a ministry or public entity purports to enter into contrary to subsection (1) on or after April 1, 2003 is not binding on or enforceable against any ministry or public entity unless the Minister of Finance exempts it in writing from the application of this subsection.*
 - *The Act defines “public entity” as (a) a Crown agency, (b) a corporation, with or without share capital, that is not a Crown agency but is owned, operated or controlled by the Crown or (c) any other board, commission, authority or unincorporated body of the Crown.*

Canada *FAA*

Restrictions on Assignment of Federal Crown Debts



- Under section 68(2) of the *Financial Administration Act* (Canada), a creditor of the Crown cannot grant an effective charge on federal Crown debt by way of security. The implications for borrowers and their creditors are obvious. A trustee in bankruptcy's claim will defeat a charge on accounts to the extent the charge would otherwise have applied to such matters as tax refunds or other federal Crown payment obligations
- Only certain absolute assignments of federal Crown debts are permitted, subject to compliance with applicable regulations. The list of the prescribed classes of Crown debts includes *Expropriation Act* compensation payments, incentives payable under the *Petroleum Incentives Program Act*, rebates under subsection 121(2) of the *Excise Tax Act* payable to individuals in the circumstances described in subparagraph 121(2)(a)(ii) of such Act, rebates under subsection 252(1) of the *Excise Tax Act* payable to non-resident persons other than consumers and moneys payable pursuant to an agreement between the Minister of Finance and a company carrying on the business of mortgage insurance whereby Her Majesty guarantees claims of holders of mortgages insured by the company

Restrictions on Assignment of Federal Crown Debts continued



- *Financial Administration Act (Canada)*
 - *67. Except as provided in this Act or any other Act of Parliament,*
 - a) a Crown debt is not assignable; and*
 - b) no transaction purporting to be an assignment of a Crown debt is effective so as to confer on any person any rights or remedies in respect of that debt.*
 - *68. (1) Subject to this section, an assignment may be made of*
 - a) a Crown debt that is an amount due or becoming due under a contract; and*
 - b) any other Crown debt of a prescribed class.*
 - *(2) The assignment referred to in subsection (1) is valid only if*
 - a) it is absolute, in writing and made under the hand of the assignor;*
 - b) it does not purport to be by way of charge only; and*
 - c) notice of the assignment has been given to the Crown as provided in section 69.*

Limitations Act, 2002 and pre-January 1, 2004 Demand Promissory Notes



- Section 5 of the *Limitations Act, 2002* (Ontario), as amended, provides that the limitation period for demand obligations made from and after January 1, 2004 starts to run from and after the date on which a demand for performance is made. The foregoing applies to both primary demand obligations (e.g. demand promissory notes) and secondary demand obligations (e.g. demand guarantees)
- For obligations made prior to January 1, 2004, the law is unchanged for secondary demand obligations, however, the limitation period for primary demand obligations such as demand promissory notes began to run on the date on which the note was made

Limitations Act, 2002 and Demand Promissory Notes continued



- Under section 13(9) of the Act, an acknowledgment of an obligation after the expiry of a limitation period does not restart the applicable limitation period
- There may be adverse implications for related party demand promissory notes used in tax structured transactions prior to January 1, 2004 in light of the potential application of the *Income Tax Act* debt forgiveness rules. The 6-year limitation period that applied to such demand notes expired, at the latest, on December 31, 2009
- Any demand promissory note made prior to January 1, 2004 which was not acknowledged by a payment or by written agreement prior to the end of its 6-year limitation period is unenforceable

Limitations Act, 2002 and Demand Promissory Notes continued



- *Limitations Act, 2002 (Ontario)*
 - *5(3) For the purposes of subclause (1)(a)(i), the day on which injury, loss or damage occurs in relation to a demand obligation is the first day on which there is a failure to perform the obligation, once a demand for performance is made.*
 - *5(4) Subsection (3) applies in respect of every demand obligation created on or after January 1, 2004.*
 - *13(1) If a person acknowledges liability in respect of a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief from enforcement of a charge on personal property, the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgment was made.*

Limitations Act, 2002 and Demand Promissory Notes continued



- *Limitations Act, 2002 (Ontario), continued*
 - *(2) An acknowledgment of liability in respect of a claim for interest is an acknowledgment of liability in respect of a claim for the principal and for interest falling due after the acknowledgment is made.*
 - *(7) An acknowledgment of liability in respect of a claim to recover or enforce an equitable interest in personal property by a person in possession of it is an acknowledgment by any other person who later comes into possession of it.*
 - *(8) Subject to subsections (9) and (10), this section applies to an acknowledgment of liability in respect of a claim for payment of a liquidated sum even though the person making the acknowledgment refuses or does not promise to pay the sum or the balance of the sum still owing.*

Limitations Act, 2002 and Demand Promissory Notes continued



- *(9) This section does not apply unless the acknowledgment is made to the person with the claim, the person's agent or an official receiver or trustee acting under the Bankruptcy and Insolvency Act (Canada) before the expiry of the limitation period applicable to the claim.*
- *(10) Subsections (1), (2), (3), (6) and (7) do not apply unless the acknowledgment is in writing and signed by the person making it or the person's agent.*

Personal Property Security Act Absolute Assignments of Accounts



- As a result of the provisions of sections 2(b), 4(1)(g) and 20(1)(d) of the *Personal Property Security Act* (Ontario), apart from assignments of accounts to facilitate collection and assignment of accounts in conjunction with a sale in bulk (note that for this section 4(1)(g) exception to apply, the assignment of accounts must be accompanied by a transfer of stock in bulk within the meaning of the *Bulk Sales Act* (Ontario)), no absolute assignment of accounts is effective (even if pay for at full value in cash by the assignee to the assignor) against the claim of a trustee in bankruptcy of the assignor unless the assignee prior to the assignor's bankruptcy registers a financing statement under the *Personal Property Security Act* for an appropriate registration period

Personal Property Security Act

Absolute Assignments of Accounts continued



- *Personal Property Security Act (Ontario)*
 - *2(b) . . . this Act applies to . . . a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation.*
 - *4(1)(g) . . . this Act does not apply . . . to a sale of accounts or chattel paper as part of a transaction to which the Bulk Sales Act applies.*
 - *20(1)(g) . . . until perfected, a security interest . . . in intangibles other than accounts [emphasis added] is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest.*

Arbitration Act, 1991 Necessary Exclusion



- Section 7(2) of the *Arbitration Act, 1991* (Ontario) provides for circumstances where a court may decline an application by a party to an arbitration agreement to stay proceedings. Presumably, the application to stay is based on the arbitration agreement providing that the resulting arbitration award will be final and binding on the parties. If the parties reference the *Arbitration Act, 1991* (Ontario) as governing the arbitration process, the parties must specifically exclude section 7(2) of such Act or risk losing the “final and binding” benefit under their agreement. Exclusions of this nature are provided for in section 3 of the Act

Arbitration Act, 1991

Necessary Exclusion continued



- *Arbitration Act, 1991 (Ontario)*
 - *(3) The parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of this Act*
 - *7(1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.*
 - *(2) However, the court may refuse to stay the proceeding in any of the following cases:*
 - 1. A party entered into the arbitration agreement while under a legal incapacity.*
 - 2. The arbitration agreement is invalid.*
 - 3. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.*
 - 4. The motion was brought with undue delay.*
 - 5. The matter is a proper one for default or summary judgment.*

Securities Transfer Act, 2006

Closely held LP Unit certificates not “securities”



- Under section 12(1) the *Securities Transfer Act, 2006* (Ontario), a certificated unit interest in a closely held limited partnership is not a “security” within the meaning of such Act (*STA*), and holders are not entitled to the benefit of the *STA* unless the limited partnership agreement in question expressly provides that the *STA* applies to such units
- To preserve enforcement rights, certificates should have endorsed on them notice that the *STA* applies to the units, notice of the restrictions on transfer of units and the right of the limited partnership to make contribution calls against holders
- It is likely that unit holders would assume (wrongly) that their units are securities entitled to the benefit of the *STA* when they are not

Securities Transfer Act, 2006

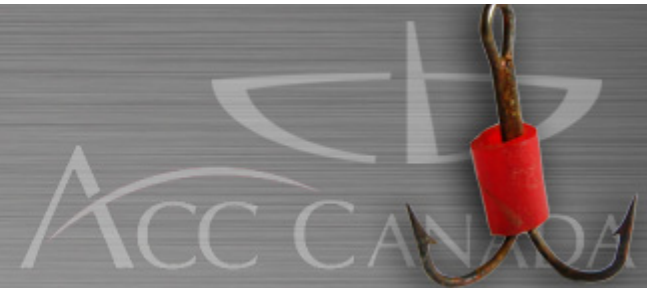
Closely held LP Units continued



- *Securities Transfer Act, 2006 (Ontario)*
 - *12. (1) An interest in a partnership or limited liability company is not a security unless,*
 - *that interest is dealt in or traded on securities exchanges or in securities markets;*
 - *the terms of that interest expressly provide that the interest is a security for the purposes of this Act*
 - *56. (1) Even against a purchaser for value and without notice, the terms of a certificated security include,*
 - *the terms stated on the security certificate; and*
 - *any terms made part of the security by reference on the security certificate to another instrument, indenture or other document or to a statute, regulation, rule, order or the like, to the extent that those terms do not conflict with the terms stated on the security certificate.*

Bulk Sales Act

Time will not cure non-compliance



- The right of an unpaid trade creditor to make application to have a sale in bulk of Ontario assets declared void under section 11(3)(c) of the *Bulk Sales Act* (Ontario) is governed by section 19 of the *Bulk Sales Act*, which, by its wording, results in no limitation period
- In agreeing to a waiver of compliance by the seller with the *Bulk Sales Act*, a buyer typically relies on an indemnity from the seller for any loss suffered by the buyer arising from the seller's failure to comply with such an Act. However, such indemnity is subject to the *Limitations Act*, 2002 limitation periods. Waiving compliance has risks for the buyer that the passage of time may not cure

Bulk Sales Act

Time will not cure non-compliance continued



- *Bulk Sales Act (Ontario)*
 - *11(1) Within five days after the completion of a sale in bulk, the buyer shall file in the office of the court an affidavit setting out the particulars of the sale, including the subject-matter thereof and the name and address of the trustee, if any, and exhibiting duplicate originals of the statement mentioned in section 4, the statement, if any, mentioned in clause 8 (1) (b), the waivers, if any, mentioned in clause 8 (1) (c) and the consent and affidavit, if any, mentioned in subsection 8 (2).*
 - *11(3) If the buyer fails to comply with subsection (1), a judge may at any time,*
 - *upon the application of the trustee or a creditor, order the buyer to comply therewith; or*
 - *upon the application of the buyer, extend the time for compliance therewith; or*
 - *upon the application of the buyer after the lapse of one year from the date of the completion of the sale in bulk and upon being satisfied that the claims of all unsecured trade creditors and secured trade creditors of the seller existing at the time of the completion of the sale have been paid in full and that no action or proceeding is pending to set aside the sale or to have the sale declared void and that the application is made in good faith and not for any improper purpose, make an order dispensing with compliance therewith.*

Bulk Sales Act

Time will not cure non-compliance continued



- *Bulk Sales Act (Ontario), continued*
 - *16(1) A sale in bulk is voidable unless the buyer has complied with this Act.*
 - *16(2) If a sale in bulk has been set aside or declared void and the buyer has received or taken possession of the stock in bulk, the buyer is personally liable to account to the creditors of the seller for the value thereof, including all money, security and property realized or taken by the buyer from, out of, or on account of, the sale or other disposition by the buyer of the stock in bulk.*
 - *17(1) An action or proceeding to set aside or have declared void a sale in bulk may be brought or taken by a creditor of the seller, and, if the seller is adjudged bankrupt, by the trustee of the seller's estate.*
 - *19. No action shall be brought or proceeding taken to set aside or have declared void a sale in bulk for failure to comply with this Act unless the action is brought or the proceeding is taken either before the buyer complies with section 11 or within six months after the buyer complies with section 11.*

Limited Partnerships Act

Liability may arise from the name of the Limited Partnership



- Under section 6(1) of the *Limited Partnerships Act* (Ontario), if a distinctive element of a limited partner's name appears in the name of the limited partnership in question, the limited partner will be liable as a general partner unless the general partner's name also includes such distinctive element or unless the creditor making a claim had actual knowledge that the limited partner was not a general partner

Limited Partnerships Act

Liability may arise from the name of the Limited Partnership continued



- *Limited Partnerships Act (Ontario)*

- *6(1) The surname or a distinctive part of the corporate name of a limited partner shall not appear in the firm name of the limited partnership unless it is also the surname or a distinctive part of the corporate name of one of the general partners.*
- *6(2) Where the surname or a distinctive part of the corporate name of a limited partner appears in the firm name contrary to subsection (1), the limited partner is liable as a general partner to any creditor of the limited partnership who has extended credit without actual knowledge that the limited partner is not a general partner.*

Corporations Tax Act

Foreign entity passive investment may result in an Ontario permanent establishment

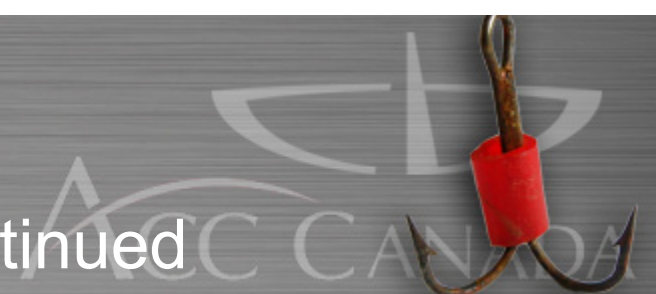


- Under section 4(2) of the *Corporations Tax Act* (Ontario), foreign entities (who would otherwise have no permanent establishment in Canada) that subscribe for limited partnership interests in a limited partnership which carries on business in Ontario are deemed to have a permanent establishment in Canada and must prepare and file tax returns under the Act and pay tax on income allocated to it by such limited partnership

Corporations Tax Act

Foreign entity passive investment

Ontario permanent establishment continued



- *Corporations Tax Act (Ontario)*

- *4(2) Where a corporation carries on business through an employee or agent who has general authority to contract for the corporation or who has a stock of merchandise owned by the corporation from which the employee or agent regularly fills orders which the employee or agent receives, such employee or agent shall be deemed to operate a permanent establishment of the corporation.*

Land Transfer Tax Act

>5% LP Unit Transfer triggers tax payment



- The effect of sections 2(1) and (3) and regulation 70/91 of the *Land Transfer Tax Act* (Ontario), is that where a limited partnership holds an interest in land located in Ontario, the transfer by a limited partner of more than a 5% interest in the limited partnership triggers an obligation on such partner to pay land transfer tax on the value of the beneficial interest in the land so conveyed

Land Transfer Tax Act

*>5% LP Unit Transfer triggers tax payment
continued*



- *Land Transfer Tax Act (Ontario)*
 - *2.2 Every person who immediately after the registration of a conveyance has a beneficial interest in the land that was acquired or increased as a result of a conveyance or as part of an arrangement relating to the conveyance is liable for the tax payable under subsection 2 (1), unless the person has previously paid tax on the acquisition of or increase in beneficial interest.*
 - *2.3(2) Where a disposition of a beneficial interest in land occurs by means of more than one disposition of a beneficial interest in the land and the Minister is of the opinion that one of the reasons for disposing of the beneficial interest by more than one disposition is to reduce the total amount of tax payable under this Act in respect of the dispositions to an amount less than the amount of tax that would have been payable if the beneficial interest in the land had been disposed of in one disposition, the total amount of tax payable under this Act in respect of the dispositions shall not be less than the amount of tax that would have been payable if the beneficial interest had been disposed of by one disposition.*

Land Transfer Tax Act

*>5% LP Unit Transfer triggers tax payment
continued*



- *Land Transfer Tax Act (Ontario), continued*
 - *3(1) For the purposes of this section, a disposition of a beneficial interest in land includes*
 - *a sale, transfer or assignment, however effected, of any part of a beneficial interest in land; and*
 - *any change in entitlement to or any accretion to a beneficial interest in land,*
- *Regulation 70/91 under the Land Transfer Tax Act (Ontario)*
 - *1(2) Section 3 of the Act does not apply to a disposition of a beneficial interest in land if it is an interest of a partner in a partnership and if the person acquiring the interest would not be entitled, during the fiscal year of the partnership in which the disposition was made, to a percentage of the profits of the partnership, assuming the partnership had profits to distribute, that exceeds by more than 5 per cent the percentage of the profits to which the person would have been entitled at the beginning of the fiscal year.*

OBCA and CBCA

50 / 50 Shareholdings

Board Requirements may result in Deadlocks



- Sections 126(3) and (4) of the *Business Corporations Act* (Ontario) (OBCA) provide that a quorum for directors meetings is a majority of the directors or the minimum number of directors set out in the articles; provided (a) in no case shall the quorum be less than $2/5^{\text{ths}}$ of the foregoing, and (b) where the number of directors is fewer than 3, a quorum for a meeting of the board of directors is all the directors
- Sections 114(2) and 114(3) of the *Canada Business Corporations Act* (CBCA) provide that a quorum for directors meetings is a majority of the directors or the minimum number of directors set out in the articles and, in each case, at least one of the directors at any such meeting must be a resident Canadian

OBCA and CBCA

50 / 50 Shareholdings - Board Requirements

May result in Deadlocks continued



- Subject to the following, where voting shares are held in equal numbers or where the shareholders agreement or voting agreement mandates voting for nominees, one shareholder cannot prevent the other shareholder from creating a deadlock at the board level by having its nominee refuse to attend any board meeting
- Apart from entering into a unanimous shareholder agreement (which has its risks) or a voting agreement, for 50/50 corporations, the board should be fixed at an uneven number of persons provided there is one independent director; and for CBCA corporations, each shareholder should ensure that at least one of its nominee is a resident Canadian

OBCA and CBCA

50 / 50 Shareholdings - Board Requirements

May result in Deadlocks continued



- *Business Corporations Act (Ontario)*

- *126(3) Subject to the articles or by-laws and subsection (4), a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors, but in no case shall a quorum be less than two-fifths of the number of directors or minimum number of directors, as the case may be.*
- *126(4) Where a corporation has fewer than three directors, all directors must be present at any meeting of directors to constitute a quorum.*

- *Canada Business Corporations Act*

- *105(3) . . . at least twenty-five per cent of the directors of a corporation must be resident Canadians. However, if a corporation has less than four directors, at least one director must be a resident Canadian.*
- *114(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors*

OBCA and CBCA

50 / 50 Shareholdings - Board Requirements

May result in Deadlocks continued



- *Canada Business Corporations Act, continued*
 - *114(3) Directors . . . shall not transact business at a meeting of directors unless, . . . if the corporation is subject to subsection 105(3), at least twenty-five per cent of the directors present are resident Canadians or, if the corporation has less than four directors, at least one of the directors present is a resident Canadian*
 - *114(4) Despite subsection (3), directors may transact business at a meeting of directors where the number of resident Canadian directors, required under that subsection, is not present if*
 - a) a resident Canadian director who is unable to be present approves in writing, or by telephonic, electronic or other communication facility, the business transacted at the meeting; and*
 - b) the required number of resident Canadian directors would have been present had that director been present at the meeting.*

OBCA / CBCA

Unanimous Shareholder Agreement Risks



- Section 108 of the *Business Corporations Act* (Ontario) and section 146 of the *Canada Business Corporations Act* provide that shareholders may enter into a unanimous shareholder agreement (USA) which restricts in whole or in part the powers of directors. However, the shareholders are then subject to the duties and liabilities of a director (arising under the OBCA / CBCA or otherwise) to the extent that the agreement restricts the discretion or powers of the directors
- Shareholders sometimes (but rarely) indemnify their nominee directors – usually the corporation provides the indemnity to the extent directors and officers insurance coverage, if in place, does not. However, the downside of entering into a USA is that the limited liability of shareholders may significantly be compromised where the conduct of the shareholders (as surrogate directors) is actionable by third parties or by the corporation

OBCA / CBCA

Unanimous Shareholder Agreement Risks continued



- *Business Corporations Act (Ontario)*
 - *108(3) Where a person who is the registered holder of all the issued shares of a corporation makes a written declaration that restricts in whole or in part the powers of the directors to manage or supervise the management of the business and affairs of a corporation, the declaration shall be deemed to be a unanimous shareholder agreement.*
 - *108(5) A shareholder who is a party to a unanimous shareholder agreement has all the rights, powers, duties and liabilities of a director of a corporation, whether arising under this Act or otherwise, including any defences available to the directors, to which the agreement relates to the extent that the agreement restricts the discretion or powers of the directors to manage or supervise the management of the business and affairs of the corporation and the directors are relieved of their duties and liabilities, including any liabilities under section 131, to the same extent.*

OBCA / CBCA

Unanimous Shareholder Agreement Risks continued



- *Canada Business Corporations Act*
 - *146(1) An otherwise lawful written agreement among all the shareholders of a corporation, or among all the shareholders and one or more persons who are not shareholders, that restricts, in whole or in part, the powers of the directors to manage, or supervise the management of, the business and affairs of the corporation is valid.*
 - *146(5) To the extent that a unanimous shareholder agreement restricts the powers of the directors to manage, or supervise the management of, the business and affairs of the corporation, parties to the unanimous shareholder agreement who are given that power to manage or supervise the management of the business and affairs of the corporation have all the rights, powers, duties and liabilities of a director of the corporation, whether they arise under this Act or otherwise, including any defences available to the directors, and the directors are relieved of their rights, powers, duties and liabilities, including their liabilities under section 119, to the same extent.*

OBCA / CBCA

You Can't Meet with Yourself and Related Issues



- USAs often include a provision fixing shareholder approval rates at voting percentages which are less than those prescribed by the applicable Business Corporations Act for the matter in question. Any such provision is ineffective and exposes the majority shareholders to claims by minority shareholders
- Signed resolutions by less than all the shareholders are not effective, even where the shareholder(s) signing, for example, represent $\frac{2}{3}$ of voting rights of the corporation
- A person cannot meet with him/herself. A shareholder cannot “split” him/herself in two by granting a proxy for some of his/her shares and attending a meeting in person to vote the balance of the shares. This may give rise to a deadlock at the shareholder level. Whether or not a required quorum in votes entitled to be cast is met, a person still cannot meet with him/herself and a signed resolution is not effective

Retail Sales Tax Act Section 6

HST did not eliminate the need for Clearance



- Implementation of the harmonized sales tax in Ontario does not eliminate the requirement for the purchaser of assets to have the seller seek and obtain a section 6 of the *Retail Sales Tax Act* (Ontario) clearance certificate. If a certificate is not obtained, any retail sales tax obligation (failure to collect and remit, interest and penalties) of the seller of goods that are tangible personal property arising out of circumstances which existing prior to July 1, 2010 will become an obligation of the buyer. Continue this practice until June 30, 2016

Retail Sales Tax Act Section 6

HST continued



- *Retail Sales Tax Act (Ontario)*
 - *6(1) No person shall dispose of his, her or its stock through a sale in bulk to which the Bulk Sales Act applies without first obtaining a certificate in duplicate from the Minister that all taxes collectable or payable by such person have been paid or that such person has entered into an arrangement satisfactory to the Minister for the payment of such taxes or for securing their payment.*
 - *(2) Every person purchasing stock through a sale in bulk to which the Bulk Sales Act applies shall obtain from the person selling such stock the duplicate copy of the certificate furnished under subsection (1), and, if the person who is purchasing the stock fails to do so, that person is responsible for payment to the Minister of all taxes collectable or payable by the person who is disposing of the stock through a sale in bulk.*
 - *(3) The issuance of a certificate by the Minister under subsection (1) does not affect any liability under this Act of the person in respect of whom the certificate is issued.*
 - *18(3) The Minister may assess or reassess any tax payable under this Act by a purchaser, other than a manufacturing contractor, or by a registrant within four years from the day such tax became payable.*

Limited Partnerships Act

Being a GP director / officer not without risks



- Under section 13(1) of the *Limited Partnerships Act* (Ontario), a limited partner who takes part in the control of the business of the limited partnership is liable as a general partner. There is case law to the effect that an individual who is a limited partner and a director of a corporate general partner was, notwithstanding he held himself out as a director of the general partner, found personally liable as a general partner for the obligations of the limited partnership

Limited Partnerships Act

*Being a GP director / officer not without risks
continued*



- *Limited Partnerships Act (Ontario)*
 - *13(1) A limited partner is not liable as a general partner unless, in addition to exercising rights and powers as a limited partner, the limited partner takes part in the control of the business.*
 - *(2) For the purposes of subsection (1), a limited partner shall not be presumed to be taking part in the control of the business by reason only that the limited partner exercises rights and powers in addition to the rights and powers conferred upon the limited partner by this Act.*

Corporations Returns Act

Public filings disclose shareholder information



- Section 16 of the *Corporations Returns Act (Canada)* provides the one searchable public record in Canada which contains detailed information on each closely-held corporation required to make filings under the Act, including the identity of persons holding more than 10% of the shares of the corporation. Financial statements and information regarding transfers of technology filed under sections 5 and 6 of the Act are deemed privileged under section 18(1) of the Act and are excluded from public inspection

Corporations Returns Act



- *Corporations Returns Act (Canada)*
 - *3(1) . . . this Part applies to every corporation that carries on business in Canada or that is incorporated under a law of Canada or a province*
 - a) *for any reporting period of the corporation in respect of which*
 - i. *the gross revenue of the corporation for that reporting period from business carried on by it in Canada, determined in the prescribed manner, exceeded fifteen million dollars or such greater amount as may be prescribed, or*
 - ii. *the assets of the corporation as of the last day of that reporting period, determined in the prescribed manner, exceeded ten million dollars or such greater amount as may be prescribed; or*

Corporations Returns Act



- *Corporations Returns Act (Canada), continued*

- b) for the purposes of section 4, for any reporting period of the corporation in respect of which the value of*

- i. equity in the corporation held directly or indirectly by persons not resident in Canada,*

- ii. debt obligations with an original term to maturity of one year or more owing directly or indirectly to persons not resident in Canada, or*

- iii. debt obligations owing directly or indirectly to affiliates, shareholders or directors of the corporation not resident in Canada*

- exceeds a book value of two hundred thousand dollars or such greater amount as may be prescribed.*

Corporations Returns Act



- *Corporations Returns Act (Canada), continued*
 - *3(3) For the purposes of subsection (1), the gross revenue and assets of a corporation include the gross revenue and assets of all its affiliates that carry on business in Canada.*
 - *4(1) ... every corporation to which this Part applies shall, for each reporting period of the corporation, file with the Chief Statistician of Canada, not later than ninety days following the end of the reporting period, a return in the prescribed form containing the prescribed information including the following particulars:*
 - a) the corporate name of the corporation;*
 - b) the address of the head office of the corporation and, in the case of a corporation not resident in Canada, the address of its principal place of business in Canada or place to which communications for purposes of this Part may be directed;*

Corporations Returns Act



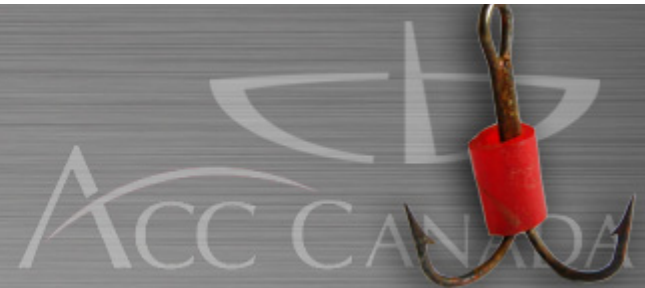
- *Corporations Returns Act (Canada), continued*
 - c) *the manner in which the corporation was incorporated, and the date and place of its incorporation;*
 - d) *the amount of the authorized share capital of the corporation, the number of shares of each class into which it is divided and a description of the voting rights and options attaching to each such class;*
 - e) *the address of the head office of the corporation and, in the case of a corporation not resident in Canada, the address of its principal place of business in Canada or place to which communications for purposes of this Part may be directed;*

Corporations Returns Act



- *Corporations Returns Act (Canada), continued*
 - i. in the case of corporations having fifty shareholders or less,*
 - A. the number of shares of that class owned by persons resident in Canada and the number of shares of that class owned by persons not resident in Canada, and*
 - B. the number of persons not resident in Canada who owned more than five per cent each of the total number of issued shares of that class, and the number of shares of that class owned by each such person, and*
 - ii. in the case of corporations having more than fifty shareholders,*
 - A. the number of shares of that class held by persons having addresses as shown in the relevant records that the corporation is required to keep under the law of the place of its incorporation (in this subparagraph referred to as "addresses of record") in Canada, by persons having addresses of record elsewhere than in Canada and by persons not having addresses of record, respectively, and*
 - B. the number of persons having addresses of record elsewhere than in Canada or not having addresses of record who, according to the records of the corporation referred to in clause (A), held more than five per cent each of the total number of issued shares of that class, and the number of shares of that class held by each such person;*

Corporations Returns Act



- *Corporations Returns Act (Canada), continued*
 - f) *in the case of corporations having fifty shareholders or less, particulars as described in paragraphs (a) and (b) in respect of each body corporate owning ten per cent or more of the issued shares of the corporation or of the issued shares thereof of any class, and the number of shares of each class owned by that body corporate;*
 - g) *in the case of corporations having more than fifty shareholders, particulars as described in paragraphs (a) and (b) in respect of each body corporate holding ten per cent or more of the issued shares of the corporation or of the issued shares thereof of any class, and the number of shares of each class held by that body corporate;*

Corporations Returns Act



- *Corporations Returns Act (Canada), continued*
 - h) *in the case of corporations having fifty shareholders or less, the name and address in respect of each person other than a body corporate and of each individual who is a member of a related group, where the person owns, or the related group together owns, ten per cent or more of the issued shares of the corporation or of the issued shares thereof of any class, and the number of shares of each class owned by the person or related group;*
 - i) *in the case of corporations having more than fifty shareholders, the name and address of each person other than a body corporate holding ten per cent or more of the issued shares of the corporation or of the issued shares thereof of any class, and the number of shares of each class held by that person;*

Corporations Returns Act



- *Corporations Returns Act (Canada), continued*
 - j) *particulars as described in paragraphs (a), (b) and (c) in respect of each body corporate that carries on business in Canada or that is incorporated under a law of Canada or a province, where the corporation owns issued shares of the body corporate to which are attached a total of ten per cent or more of the votes that may be cast to elect directors;*
 - k) *the total face value of issued and outstanding debentures of the corporation and the total face value and a description of each issue thereof;*

Corporations Returns Act



- *Corporations Returns Act (Canada), continued*
 - m) *the name and address of each director of the corporation, and the nationality or citizenship of each individual who is a director of the corporation;*
 - n) *the name, address and nationality or citizenship of each officer of the corporation resident in Canada, and the position in the corporation held by each such officer; and*
 - o) *the number of shares of each class owned by each director and officer of the corporation and a description of the voting rights attached to those shares*

Corporations Returns Act



- *Corporations Returns Act (Canada)*
 - *16 The information contained in any return filed by a corporation pursuant to section 4 shall be made available to the Minister of Industry and that information shall be made available by the Minister of Industry for inspection by any person, on application at any reasonable time and on payment of such fee, not exceeding one dollar in respect of any one corporation, as may be prescribed.*



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