Not-for-Profit Corporations Act, 2010 (ONCA): Understanding share capital social clubs

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Share capital social clubs are corporations with share capital and shareholders incorporated under Part II of the current Ontario *Corporations Act* (OCA) that have social objects, such as golf, tennis, curling and country clubs.

Unlike non-share capital social clubs incorporated under Part III of the OCA, the ONCA will not automatically apply to share capital social clubs. The OCA will continue to apply to these clubs for five years and during that time, the club must choose one of three options for continuance:

1. As a corporation without share capital under the ONCA;
2. As a for-profit corporation under the Ontario *Business Corporations Act*; or
3. As a cooperative corporation under the Ontario *Co-operative Corporations Act*.

Continuance must be approved by special resolution of each class of shareholders, not members, by a separate vote (an application can be made to the court if obtaining quorum for each class is not possible).

It is important to remember the distinction between shareholders and members in connection with the continuance. For share capital social clubs, it is the shareholders who have rights under the OCA, and while members of share capital social clubs have certain contractual rights with the club, they are not members under Part III of the OCA.

Failure to continue as a for-profit, not-for-profit or co-operative corporation will result in dissolution at the end of the five-year period, so it is important for share capital social clubs to think about their options as soon as possible. Note that revival options are available if a share capital social club is dissolved after the expiry of this five-year period, but this is not a situation that a club wants to find itself in.

Share capital social clubs must turn their attention to considering how they will structure the club going forward either as a for-profit, co-operative, or not-for-profit corporation. Additionally, these clubs should duly consider the rights of existing and future members and/or shareholders of their clubs by asking questions such as:

- How will shareholders be compensated for the cancellation of their shares if the club becomes a non-share capital corporation; and
- How will the club reorganize its membership structure if it becomes a non-share capital corporation?

The five-year deadline will fast approach if clubs do not proactively plan and consider how they should structure their club going forward!

BLG's ONCA series

To assist in considering the impact of the ONCA on your organization, BLG has prepared a series of articles that are linked below.

If you have any questions about the transition process or would like to learn more about the ONCA, please email any of the authors or key contacts listed below, or any other member of our Charities & Not-For-Profit group.

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