CANADIAN BAR ASSOCIATION
ASSOCIATION DU BARREAU CANADIEN

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Via email: mfpbconsultations-consultationsdgpcm@ised-isde.gc.ca

Marketplace Frameworks Policy Branch
Innovation, Science and Economic Development Canada
235 Queen Street
Ottawa, ON K1A 0H5

To Whom it May Concern:

Re: Consultation on Modernizing Business Law Frameworks (Red Tape Review)

The CBA Business Law Section and the CBA Insolvency Law Section (collectively, "the Sections") submit these comments in response to Innovation, Science and Economic Development Canada's (ISED) consultation on proposed amendments to Canada's federal business law frameworks. The Business Law Section addresses proposed amendments to the *Canada Business Corporations Act* (CBCA); the Insolvency Law Section addresses proposed amendments to the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA).

The CBA is a national association representing over 40,000 members, including lawyers, judges, notaries, academics, and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Business Law Section comprises approximately 1,500 members practicing across all areas of corporate and commercial law, including the incorporation, governance, and ongoing compliance of federal corporations, and the daily advising of closely held corporations, SMEs, venture-backed companies, and distributing corporations. The CBA Insolvency Law Section comprises approximately 1,200 members practicing in all aspects of insolvency, restructuring, and debtors' and creditors' rights law, including advisers to debtors, secured and unsecured creditors, and monitors across BIA and CCAA proceedings of every scale.

The Sections support the objectives of the Red Tape Review. The proposed amendments are practical and overdue. Reducing unnecessary administrative burden, modernizing outdated statutory requirements, and enabling digital governance practices are consistent with the CBA's longstanding advocacy for a federal legal framework that is efficient, accessible, and internationally competitive. The Sections endorse the proposed amendments within their respective areas and offer targeted recommendations to strengthen them.

PART A: CANADA BUSINESS CORPORATIONS ACT

The CBA Business Law Section supports the proposed CBCA amendments. These are practical, proportionate, and address real friction that corporations and their advisers experience under the current framework. The Section's positions are grounded in four principles: legal certainty, practical compliance, shareholder participation, and privacy and data accuracy. The CBCA should remain technology-neutral and accessible to closely held corporations, SMEs, venture-backed companies, and distributing corporations, and should be harmonized, where appropriate, with securities law and modern provincial corporate statutes.

The proposed amendments are modest and appropriate, but ISED should go further. The strongest reforms will address the operational friction practitioners encounter daily: unnecessary by-law amendments to authorize routine digital practices; recurring applications for exemptive relief; avoidable filing confusion; short reporting windows; outdated director residency requirements; the absence of statutory cure mechanisms for technical defects; and unnecessary public disclosure of residential address information. Recent developments in the United States and Europe reinforce the need for a federal corporate statute that is digital-ready, commercially efficient, and internationally competitive. ISED should proceed with the proposed amendments and use this consultation to lay the groundwork for a broader modernization package.

A1.1 – Virtual and Hybrid Meetings

The CBA supports permitting virtual and hybrid shareholder and director meetings by default, subject to restrictions in the articles or by-laws. ISED is correct that the current provisions reflect a time when electronic conferencing was expensive and unfamiliar; that rationale no longer holds. Under the current framework, corporations, particularly those with legacy by-laws, must incur unnecessary legal and administrative expense to authorize meeting practices that are already standard in the market. The unanimous-consent requirement for electronic director participation has no sound justification as a default rule. It creates avoidable friction in exactly the situations where speed matters most: financings, reorganizations, and urgent board decisions. These changes would reduce cost, improve access, and support meaningful participation without weakening governance standards.

The amendments should be technology-neutral and address meeting notices, quorum, voting, proxy voting, chair authority, minutes, and technical-failure protocols. Meeting notices should clearly describe how participants may access the meeting, participate, ask questions, and vote. For directors' meetings, the unanimous-consent requirement should be removed and electronic participation permitted by any technology that allows directors to communicate adequately, unless the articles or by-laws provide otherwise.

The CBCA should also include a limited safe harbour confirming that a minor or temporary technological interruption does not invalidate a meeting or vote where the corporation took reasonable steps to provide access and voting functionality, and where the interruption did not materially prejudice participation or the outcome. The safe harbour should not protect a meeting where technology failures materially impair shareholder rights.

A1.2 – Annual Update Statement (Name Change)

The CBA supports renaming the "Annual Return" as the "Annual Update Statement." The current name causes recurring confusion with the CRA income tax return, leading to inadvertent non-compliance and an increased risk of administrative dissolution, particularly for small private corporations without dedicated legal or compliance staff. This is a low-cost, high-clarity fix.

ISED should update all CBCA provisions, regulations, forms, online filing screens, reminder notices, and public-facing materials. For a transition period, use “Annual Update Statement (formerly Annual Return)” to preserve continuity for existing filers. The amendment should not change filing deadlines or impose new substantive requirements. Reminder notices and online filing prompts should also clearly distinguish the corporate-law filing from tax filings.

A1.3 – Additional CBCA Modernization Priorities

ISED should use this consultation, or the next omnibus corporate-law bill, to address longstanding CBCA irritants that generate recurring cost, delay, uncertainty, and privacy risk without producing proportionate benefit for shareholders, markets, or government oversight. Delaware’s corporate statute demonstrates workable models for remote-meeting mechanics, electronic records, non-unanimous written consents, and statutory validation of defective corporate acts. Europe’s experience is a cautionary one: disclosure and governance regimes that are perceived as duplicative or disproportionate for SMEs

are vulnerable to rollback. Canada should modernize the CBCA to promote good governance without importing unnecessary compliance complexity.

The CBA recommends that ISED proceed with the following priority amendments as part of a broader CBCA modernization package:

1. Digital-by-default corporate governance: Adopt a broader digital-by-default framework for meetings, notices, consents, minute books, securities registers, director and shareholder approvals, and technical-failure safe harbours. Electronic operations should be the statutory default, subject to appropriate articles or by-law restrictions and meaningful participation safeguards.
2. Notice-and-access: Complete the pending reforms so that CBCA distributing corporations can use securities-law notice-and-access procedures without annual Director exemptive relief. The current annual application process creates avoidable cost, timing risk, and duplication for issuers already complying with securities-law delivery rules.
3. ISC and beneficial ownership clarity: Preserve the policy objective of beneficial ownership transparency while refining the ISC regime to improve clarity, privacy, and compliance efficiency. Specific improvements should include extending the 15-day update and filing period to 30 days, adding a reasonable-cause cure period or a transaction-closing safe harbour for multi-step reorganizations, and providing clearer guidance on control in fact, indirect influence, joint ownership, in-concert arrangements, trust structures, fair market value, and public access to personal information.
4. Written shareholder resolutions: For non-distributing corporations, permit ordinary written shareholder resolutions to be passed by the voting threshold that would apply at a meeting, with prompt notice to non-signing shareholders. This reduces unnecessary meeting mechanics for routine approvals while preserving notice and minority protections.
5. Director residency: Review or repeal the general 25% resident Canadian director requirement for ordinary CBCA corporations, while preserving sector-specific Canadian ownership or control requirements where separately justified. Harmonization with modern provincial approaches and leading foreign frameworks would reduce friction in incorporation and improve federal competitiveness.
6. Statutory cure and validation mechanism: Add a modern curative regime for defective corporate acts, share issuances, by-law approvals, director appointments, amalgamation steps, and filings, with court validation where needed. This would improve certainty in due diligence, financings, M&A closings, reorganizations, and minute-book cleanups, and reduce the need for bespoke rectification.
7. Residential address privacy: Reduce unnecessary public exposure of residential addresses by emphasizing service addresses, suppressing residential addresses where a service address is provided, and establishing a process for correcting or suppressing historical residential-address disclosures where appropriate.
8. Private-company governance flexibility: Consider targeted statutory recognition of investor-rights agreements and other sophisticated private-company governance arrangements, with guardrails preserving directors' statutory duties, the oppression remedy, minority protections, and disclosure to affected shareholders.
9. Proportionate governance and disclosure obligations: In considering future governance, sustainability, or transparency obligations, avoid duplicating securities-law, supply-chain, or other federal regimes. Any new and existing CBCA obligations should be proportionate to company size, public-interest risk, and the actual policy benefit relative to the economic burden.

PART B: BANKRUPTCY AND INSOLVENCY ACT AND COMPANIES' CREDITORS ARRANGEMENT ACT

The CBA Insolvency Law Section supports the majority of the proposed amendments to the BIA and CCAA. The proposals are timely and address procedural gaps that impose avoidable burden without improving outcomes for debtors, creditors, or the administration of insolvency proceedings. The Section's positions are guided by four principles: access to justice for debtors and creditors of all sizes; procedural efficiency; fairness to all parties; and consistency across insolvency regimes to reduce forum-shopping and improve predictability.

As noted, the Section supports the great majority of the proposed changes. On two proposals, the extension of limitation periods for BIA offences (B1.7) and the transfer of Official Receiver appointment authority (B1.9), the Section takes no position, as these raise policy considerations outside practitioners' direct experience. On the proposed CCAA Superintendent directive-making power (B2.2), the Section has substantive concerns and does not support adoption in the form proposed.

B1.1 – Streamlined Time Extensions for Proposal Meetings

The CBA supports this amendment. Requiring court applications for routine scheduling delays serves no creditor-protection purpose and adds cost that benefits no one. Aligning the Official Receiver's authority in Division II proposals with existing bankruptcy authority is sensible and practical.

B1.2 – Streamlined Small Business Proceedings

The CBA supports the proposed amendments to the MSE liquidation and restructuring. ISED is right to identify the current BIA framework as overly onerous to small enterprises. The cost of a standard bankruptcy or proposal process is often disproportionate to the debt levels involved, and the procedural requirements were designed for larger, more complex insolvencies. These amendments lower barriers, reduce complexity, and improve the chances that viable businesses can restructure rather than liquidate, or alternatively liquidate in a more cost-effective manner. The proposal aligns with international best practices.

The legislation should also provide that during the 90-day automatic stay, and any extension thereof, the debtor must meet ongoing going-concern obligations. Failure to do so should be treated as a default, triggering the same consequences as the payment default mechanism proposed under the MSE Proposal regime.

B1.3 – BIA Notice by Superintendent's Directive

The CBA supports this amendment. Mandatory newspaper publication is costly and outdated. Allowing the Superintendent to prescribe appropriate notice methods reflects how practitioners and stakeholders actually receive information. The amendment should expressly provide that publication on the Licensed Insolvency Trustee's website is a requirement for notice under the BIA, and may be sufficient notice depending on the circumstances.

B1.4 – Authorize LITs to Administer Oaths

The CBA supports this amendment. LITs already perform statutory declarations and affidavits central to BIA administration; requiring redundant provincial appointments adds duplication without improving the integrity of the process. ISED should consult with provincial authorities that govern the administration of oaths in each province before the amendment comes into force, to ensure consistent implementation and identify any necessary complementary steps.

B1.5 – Technology Adoption and Remote Participation

The CBA supports this amendment. These practices have been standard since 2020. Codifying them removes unnecessary legal uncertainty and reduces costs without diminishing procedural integrity.

B1.6 – Court Leave for Second Consumer Proposals

The CBA supports this amendment. The consumer proposal regime is designed to give debtors a structured opportunity to repay creditors over a fixed period of up to five years. Cascading proposals, meaning successive filings used to extend repayment beyond that limit or to omit creditors, exploit this framework in ways that undermine its integrity. Requiring court approval before a second proposal may be filed is a proportionate and appropriate check.

B1.7 – Extend Limitation Periods for BIA Offences

The CBA Insolvency Law Section takes no position on this proposed amendment.

B1.8 – Withdraw Mediation Applications Upon Agreement

The CBA supports this amendment. The absence of a withdrawal mechanism forces unnecessary mediations where the parties have already reached agreement, adding delay and cost for LITs, Official Receivers, and debtors alike. This is a straightforward fix.

B1.9 – Superintendent Appointment of Official Receivers

The CBA Insolvency Law Section takes no position on this proposed amendment.

B2.1 – CCAA Court Discretion on Notice

The CBA supports this amendment. In large CCAA restructurings, affected stakeholders are frequently industry-specific or are widespread and non-localized. Mandatory newspaper publication has not shown to reach the attention of key stakeholders, nor does it serve the transparency rationale that underlies notice requirements.

Granting courts discretion to determine appropriate methods is consistent with the CCAA's flexible, court-supervised framework. The amendment should expressly recognize publication on the Monitor's website as a required method of providing notice in CCAA proceedings.

B2.2 – CCAA Superintendent Directive-Making Power

The CBA does not support this amendment in its current form. The consultation paper does not identify the specific administrative matters on which the Superintendent would be authorized to issue directives, making it impossible to assess the scope or impact of the proposed power.

The CCAA operates through a framework of court-supervised orders that are tailored to the specific circumstances of each proceeding. Notice methods, timelines, and procedural requirements are typically negotiated among stakeholders and approved by the court as part of the initial order. These are not purely administrative matters: they reflect the court's ongoing oversight of a complex, multi-party proceeding. A directive-making power that could affect these elements risks displacing that negotiated flexibility with a one-size-fits-all administrative rule. Without knowing what the Superintendent proposes to direct, the CBA cannot support the amendment.

ISED should not proceed with this amendment without first publishing the specific matters on which the Superintendent would be authorized to issue directives, and consulting with insolvency practitioners and other affected stakeholders. If the power is ultimately adopted, it must be expressly subordinate to court orders, and courts must retain full discretion to depart from directives where the circumstances of a proceeding so require.

B2.3 – Additional Recommendation: CCAA Initial Stay Period

The Insolvency Law Section raises a concern outside the specific consultation questions that falls squarely within the Red Tape Review's mandate. Under section 11.02(1) of the CCAA, the maximum initial stay period is 10 days. In practice, courts, counsel, and affected stakeholders are finding it

increasingly difficult to schedule comeback hearings within this window. 10 days is also insufficient for creditors and other affected parties to review materials, obtain legal advice, and participate meaningfully in comeback proceedings. This creates a strain on judicial resources and contradicts the objectives of a comeback hearing.

The CBA recommends amending section 11.02(1) of the CCAA to extend the maximum initial stay from 10 days to 20 days. This would reduce scheduling pressure on courts and counsel and give stakeholders adequate time to engage meaningfully at the outset of a restructuring.

CONCLUSION

The Sections support the proposed amendments to the CBCA, BIA, and CCAA. These are practical, proportionate reforms grounded in the day-to-day experience of practitioners who work with these statutes on behalf of corporations, creditors, debtors, and insolvency professionals.

ISED should proceed with the proposed amendments without delay and pair statutory changes with updated regulations, forms, filing-system improvements, and clear public guidance. Statutory changes that are not followed by operational implementation produce terminology shifts, not compliance savings. The additional recommendations in this submission, on CBCA modernization priorities, MSE going-concern obligations, trustee and monitor website notice, the CCAA initial stay period, and the CCAA directive-making power, identify targeted amendments that would materially strengthen the proposed package.

The Sections welcome the opportunity to discuss these recommendations further and are available to assist ISED in refining the proposed amendments. CBA members are prepared to contribute substantive expertise to any follow-up technical consultations.

Yours truly,

(original letter signed by Noel Corriveau for James Reid and Ron Kugan)

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