

Social Clubs with Share Capital Options for Continuing

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What is a Social Club with Share Capital?

- Social Clubs with Share Capital are social companies with share capital that were incorporated under Part II of the Ontario *Corporations Act*, RSO 1990, c C.38 (“OCA”)
- Some social clubs may have been incorporated under a special act
- These “social companies” have objects that are wholly or partly social in nature and they have shareholders
- Examples include golf, tennis, curling and social clubs in which at least some of the members hold shares in the social club

Continuation Deadline

- Any social club that was either incorporated or continued under Part II of the OCA is required to continue:
 1. As a corporation without share capital under the *Not-for-Profit Corporations Act, 2010* (“ONCA”),
 2. As a co-operative corporation under the Co-operative Corporations Act (“OCCA”), or
 3. As a corporation with share capital under the Business Corporations Act (“OBICA”)
- The deadline to complete this continuation is October 19, 2026

How to Continue

1. Continuation under any of the ONCA, OCCA or OBCA must be approved by special resolution, meaning it must be approved by the directors and by two-thirds of the votes cast at a general meeting of the shareholders
 - Currently subsection 2.1(4) of the OCA requires that each class of shareholders must approve the continuation but Bill 139, *Less Red Tape, More Common Sense Act, 2023*, proposes to repeal subsection 2.1(4) of the OCA
 - If the social club is unable to achieve quorum to approve the special resolution, the social club may apply to the court for an order waiving the requirement for a special resolution

How to Continue

2. Once approved, articles of continuation should be filed and all constating documents should be updated to comply with the new legislative regime
3. If continuing under
 - a. the ONCA, provisions regarding authorized capital must be deleted and any issued shares need to be cancelled;
 - b. the OBCA, changes need to be made to reflect a for-profit mode of operations (if operating as a non-profit); or
 - c. the OCCA, changes need to be made to reflect co-operative values.
4. Any tax consequences of the continuance or new method of operations need to be addressed

Continuation Options Compared

ONCA	OBCA
Non-share capital corporation with members	Share capital corporation with shareholders
Remain a not-for-profit and tax-exempt status	Become for-profit and likely lose tax-exempt status
Operated not for profit	Operated for profit
Upon dissolution, assets may go to the Crown; a registered charity or an organization with similar purposes; or to the members, depending on whether the club is a public benefit corporation and its tax status	Upon dissolution, assets go to the shareholders

- A continuation under the OCCA will have elements of the ONCA or OBCA continuation options, depending on if the co-operative has share capital or not

Features of an ONCA Corporation

- A non-share capital corporation governed by the ONCA will have members who have the power to elect directors, appoint an auditor, approve changes to constating documents, among other powers
- The ONCA permits *ex-officio* members and directors if specified in a corporation's bylaws
- Members have rights to bring an application to the court on behalf of the corporation (derivative action) or to direct a person to comply with the ONCA (compliance order)

Features of an ONCA Corporation

- A non-share capital corporation can be a Public Benefit Corporation (“PBC”) which means it is either:
 - (a) a charitable corporation, or
 - (b) a non-charitable corporation that receives more than \$10,000 in a financial year in donations/gifts from the public (people who are not members, directors, officers or employees of the corporation) or in grants/similar financial assistance from the government or a government agency
- A Non-PBC does not meet the definition of a PBC
- Depending on whether a corporation is a PBC or a non-PBC it will have different provisions regarding the level of financial review required and whether property can be distributed to members upon dissolution

Tax Implications of Continuing under the ONCA

- A social club that wants to be or remain tax-exempt must be aware that it cannot be operated for the purpose of financial gain for its members
- Paragraph 149(1)(l) of the *Income Tax Act* exempts an organization from paying tax if they are
 - Not a charity
 - Organized and operated exclusively for [...] any other purpose except profit,
 - No part of the income of which was payable to, or otherwise available for the personal benefit of, any [...] member or shareholder

Tax Implications of Continuing under the ONCA

- The social club must decide how to convert and/or dispose of its share capital in order to continue as a corporation without share capital
- Existing shareholders may be entitled to receive compensation on the cancellation or conversion of their shares
- The conversion of the shares in the social club to membership interests in the non-share capital corporation may have tax implications, depending on whether this conversion of shares is a “disposition” as per subsection 248(1) of the *Income Tax Act*

Features of an OBCA Corporation

- A share capital corporation governed by the OBCA will have shareholders who have the power to elect directors and appoint an auditor among other powers
- Shareholders have rights to bring an application to the court on behalf of the corporation (derivative action), to direct a person to comply with the OBCA (compliance order), and to obtain an order to rectify any act or omission that unfairly disregards the interests of any security holder of the corporation (oppression remedy)
- Upon dissolution, shareholders may receive the net assets of the corporation following the payment of the corporation's liabilities

Tax Implications of Continuing under the OBCA

- If a social club continues under the OBCA it may cease to be a non-profit organization and would no longer be exempt from income taxes under 149(1)(l)
- Deemed year-end immediately before the transition from a non-profit to a for-profit organization and a new taxation year will begin as a for-profit
- All property will be deemed to have been sold and immediately reacquired at fair market value – the result being that that any gain that accrued on the assets during the time the organization qualified as an NPO will generally be exempt from tax
- However, if NPO is subject to 149(5), all gains will be taxable except for gains resulting from the disposition of property used exclusively for dining, recreational or sporting facilities

Failure to Continue

- Any social club that is required to continue which fails to do so by the October 19, 2026 deadline will be dissolved effective October 20, 2026
- However, the social club will still be deemed to exist post-dissolution for the following purposes
 - To hold a meeting of shareholders to pass a special resolution to authorizing filing articles of continuance under the ONCA, OCCA or OBCA, provided that the articles of continuance are filed not later than 20 years after the date of its dissolution
 - To apply to the court to approve the special resolution to continue under the ONCA, OCCA or OBCA if the social club is unable to obtain a quorum

Practical Steps to Continue

- Identify and locate existing shareholders
- Gather copies of all constating documents (e.g. letters patent, bylaws) and share ledgers
- Identify the assets of the social club and review equity shareholdings
- Consult with accounting advisors regarding tax implications of continuance options
- Create a process and timelines for the continuation
- Prepare a communication plan to reach out to and engage shareholders and members so that they are aware of the changes that will take place



Final Thoughts

- The decision to continue to the ONCA, OBCA, or OCCA will have corporate and tax implications for the social club
- Any of the options will require significant changes to the governance structure of the social club
- Social companies and their boards should start planning for the continuation process now so that they have time to discuss and plan for the continuation changes



Questions?



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