

# Co-operative Corporations Act Loi sur les sociétés coopératives

## R.R.O. 1990, REGULATION 178

### GENERAL

**Consolidation Period:** From August 31, 2007 to the [e-Laws currency date](#).

Last amendment: O. Reg. 414/07.

*This Regulation is made in English only.*

### DEFINITIONS

**0.1** (1) The following are the circumstances in which a member of a co-operative is not required to be employed by the co-operative, for the purposes of the definition of “worker co-operative” in subsection 1 (1) of the Act:

1. The member of the co-operative is a member of a trade union that has entered into a collective agreement with the co-operative, a term of which is that the trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment.
2. The co-operative has been incorporated for less than two years.
3. REVOKED: R.R.O. 1990, Reg. 178, s. 0.1 (2).

O. Reg. 495/92, s. 1.

(2) SPENT: O. Reg. 495/92, s. 1.

1. REVOKED: O. Reg. 318/98, s. 1.

### INCORPORATION

2. REVOKED: O. Reg. 318/98, s. 1.

**2.1** (1) For the purpose of subsection 5 (1) of the Act, the incorporators of a non-profit housing co-operative must provide the following:

1. If the incorporation does not involve the conversion of residential premises, a statement to that effect, signed by each first director.
2. If the incorporation does involve the conversion of residential premises, a plan prepared by an organization or individual in the business of developing non-profit co-operative housing. O. Reg. 234/95, s. 1.

(2) The plan for converting the residential premises must include the following information:

1. A brief description of the conversion process.
2. A description of the rights of residents to remain in the residential premises if they do not become members of the co-operative.
3. A description of the method for determining the level of support among the residents for converting the residential premises. O. Reg. 234/95, s. 1.

(3) In this section,

“residential premises” means residential premises as defined in section 1 of the *Landlord and Tenant Act*. O. Reg. 234/95, s. 1.

3. REVOKED: O. Reg. 318/98, s. 1.

### NAME

4. Where the name of a co-operative to be incorporated is the same as or similar to the name of any known corporation, association, partnership or individual, whether in existence or not, so as to be, in the opinion of the Minister, likely to deceive, the name of the co-operative to be incorporated shall contain such variation from that of the known corporation, association, partnership or individual as the Minister determines. R.R.O. 1990, Reg. 178, s. 4.

5. The name of the co-operative shall not be too general in character unless the name has become established by a long and continuous prior use. R.R.O. 1990, Reg. 178, s. 5.

**6.** Where the name of a co-operative contains initials or numerals, the Minister may in his or her discretion require the addition of some distinctive word. R.R.O. 1990, Reg. 178, s. 6.

**7.** The word “amalgamated” shall not be included in the name of a co-operative unless the co-operative is an amalgamated co-operative resulting from the amalgamation of two or more co-operatives. R.R.O. 1990, Reg. 178, s. 7.

**8.** The name of a co-operative shall not include the word “condominium” or any derivation thereof. R.R.O. 1990, Reg. 178, s. 8.

**9.** The name of a co-operative shall not include the word “veteran” or any abbreviation or derivation thereof unless there has been a long and continuous prior use of the name. R.R.O. 1990, Reg. 178, s. 9.

**10.** Where a person has reserved a name and at the expiration of the period for which the name has been reserved no co-operative with that name or a similar name has been incorporated, the name or a similar name shall not be reserved until the expiration of one year thereafter. R.R.O. 1990, Reg. 178, s. 10.

#### REDEMPTION OF CERTAIN SHARES

**11.** (1) This section prescribes the manner of selecting the shares of a series of preference shares that are to be redeemed in the circumstances described in subsection 31 (1.1) of the Act. O. Reg. 414/07, s. 1.

(2) Subject to subsection (3), the shares of a series of preference shares that are to be redeemed shall be selected in one of the following ways:

1. By lot, within the series, in the manner determined by the board of directors.
2. As nearly as may be in proportion to the number of preference shares of the series that are registered in the name of each holder of shares of that series.
3. In such other manner as the board of directors determines with the consent of the holders of preference shares of the series, obtained in the manner set out in subsection 31 (3) of the Act.
4. By date of issuance, within the series, from the earliest date to the latest. O. Reg. 414/07, s. 1.

(3) The articles may confine the manner of selection to one or more of the ways described in subsection (2). O. Reg. 414/07, s. 1.

#### OFFERING STATEMENT AND MATERIAL CHANGE STATEMENT

**11.1** For the purposes of subsection 34 (1) of the Act, the prescribed number of security holders is 35. O. Reg. 414/07, s. 2.

**12.** (1) An offering statement must contain the following information:

1. The co-operative’s name.
2. Its incorporation number.
3. Its date of incorporation as it is set out in its articles of incorporation.
4. The address of its head office.
5. The name, place of residence and principal occupation of each of its directors and officers, and the title of each officer.
6. A description of the business carried on by the co-operative and its subsidiaries, if any, and the business each of them intends to carry on.
7. A summary of its most recent business plan, if available.
8. A description of its capital structure (including its authorized capital and issued capital) and the rights, privileges, conditions and material characteristics of its securities.
9. A description of all the rights, privileges, conditions and material characteristics of the securities being offered.
10. A description of how the proceeds from the sale of the securities will be used.
11. If the proceeds will be used for investment purposes, a description of the co-operative’s investment policy.
12. If the proceeds will be used to make an investment in specific businesses, a description of the nature of the businesses, their management and their capital structure.
13. If the offering is being made in connection with a plan of reorganization, a purchase and sale or an amalgamation, a description of the general effect of these proposed changes and when they will be made.
14. The details of the method of selling the securities and of any commission payable or discount allowable on the sale.
15. A description of the market, if any, on which the securities may be sold. If there is no market, a description of how the securities will be redeemed.

16. A statement of the maximum and minimum amount of the offering and, where applicable, the maximum or minimum amount of any subscription. A description of what will happen to the proceeds if the minimum amount of the offering is not raised.
17. The names of each transfer agent and registrar, if any, and the location of each register of transfer.
18. The amount and particulars of any securities, mortgages, bonds, debentures or other debt obligations ranking ahead of the securities being issued.
19. A description of any material legal proceedings to which the co-operative or its subsidiary is a party.
20. A description of any material interest of any director, officer, or employee of the co-operative or its subsidiary in the operations of the co-operative generally or in the securities being issued.
21. A description of every material contract entered into within two years before the date of the offering statement.
22. A description in conspicuous type of the risk factors of the co-operative and the risks associated with the securities being offered.
23. A description, to the extent reasonably practicable, of any substantial variations, both favourable and adverse, in the operating results of the co-operative during the three years before the date of the offering statement or since the co-operative's date of incorporation, whichever is the shorter period.
24. The amount of dividends, patronage returns or other distributions, if any, paid, declared or accumulated but unpaid by the co-operative during the five years before the date of the offering statement, or since the co-operative's date of incorporation, whichever is the shorter period.
25. The name and address of the auditor of the co-operative, if applicable.
26. A description of any other material facts.
27. A table of contents of the information contained in the offering statement. O. Reg. 234/95, s. 2 (1).

(1.1) An offering statement shall contain a certificate with the following statement in conspicuous type, signed by the chair of the board, the president and the treasurer and indicating when it was signed by each of them:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this offering statement as required by section 35 of the *Co-operative Corporations Act*.

O. Reg. 234/95, s. 2 (1).

(1.2) If there is no market on which the securities may be sold, an offering statement must include on the face page in conspicuous type the following statement:

There is no established market through which these securities may be sold.

O. Reg. 234/95, s. 2 (1).

(1.3) An offering statement must include a document indicating that a person who prepared a report, opinion or statement used in the offering statement consents to its use. O. Reg. 234/95, s. 2 (1).

(1.4) An offering statement must include the following statements in conspicuous type on the front cover:

1. No official of the Government of the Province of Ontario has considered the merits of the matters addressed in this offering statement.
2. Investors should not rely on any information other than what is contained in this offering statement.
3. The information in any projections or pro forma statements contained in this offering statement may vary materially from actual results. O. Reg. 234/95, s. 2 (1).

(2) A material change statement shall contain the following information:

1. The co-operative's name.
2. Its incorporation number.
3. The date on which the receipt for the offering statement was issued.
4. The date on which the material change occurred.
5. A description of the material change. O. Reg. 234/95, s. 2 (1).

(2.1) A material change statement shall contain a certificate with the following statement in conspicuous type, signed by the chair of the board, the president and the treasurer and indicating when it was signed by each of them:

The foregoing constitutes full, true and plain disclosure of any material change in the facts set out in the offering statement as required by section 35 of the *Co-operative Corporations Act*.

- (3) There shall be attached to as part of the offering statement,
- (a) in the case of a co-operative that has completed a financial year,
    - (i) its financial statement in respect of the last completed financial year,
    - (ii) where exigible under the Act, the auditor's report thereon, and
    - (iii) where required by the Superintendent, an unaudited financial statement made up as of a date not more than ninety days before the date of the offering statement; or
  - (b) in the case of a co-operative that has not completed a financial year,
    - (i) a financial statement made up as of a date not more than ninety days before the date of the offering statement, and
    - (ii) where required by the Superintendent, the auditor's report thereon. R.R.O. 1990, Reg. 178, s. 12 (3); O. Reg. 318/98, s. 2 (1, 2).
- (4) The Superintendent may in his or her discretion on such terms and conditions as he or she sees fit exempt a co-operative from any of the requirements of subsection (3). R.R.O. 1990, Reg. 178, s. 12 (4); O. Reg. 318/98, s. 2 (3).
- (5) A person who offers a security in the co-operative on a distribution under an offering statement must give a copy of the offering statement and statement of material change, if any, to a prospective purchaser upon request and to a purchaser. O. Reg. 234/95, s. 2 (2).

(6) In this section,  
“distribution” means,

- (a) a trade in securities of a co-operative that have not been previously issued,
- (b) a trade by the co-operative in its securities that have been redeemed by the co-operative or purchased by or donated to the co-operative, or
- (c) any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a trade described in clause (a) or (b). O. Reg. 234/95, s. 2 (2).

**12.1** For the purposes of subsection 35 (6) of the Act, the following changes are not material changes:

- 1. A change that affects the co-operative's gross revenue or gross sales by less than \$20,000.
- 2. A change that affects the co-operative's net income or loss by less than \$10,000. O. Reg. 495/92, s. 1.

#### PREScribed PERCENTAGES

**12.2** (1) For the purpose of subsections 49 (1) and 56 (4), clause 57 (2) (a) and subsections 58 (2) and 171.2 (2) of the Act, the maximum annual percentage shall be 2 per cent above the prime rate established, as of the first day of the month before the month in which the rate of interest is set or the dividend is declared, by a bank listed under Schedule I or II to the *Bank Act* (Canada), a trust corporation, caisse populaire or credit union named in the co-operative's by-laws. O. Reg. 495/92, s. 1; O. Reg. 773/92, s. 1; O. Reg. 234/95, s. 3.

(2) If a co-operative has not named a bank, a trust corporation, a caisse populaire or a credit union in its by-laws, the maximum annual percentage shall be 2 per cent above the prime rate established by the Bank of Canada as of the first day of the month before the month in which the rate of interest is set or the dividend is declared. O. Reg. 495/92, s. 1; O. Reg. 773/92, s. 1.

(3) Despite subsections (1) and (2), if a co-operative has entered into a contractual agreement to pay a specified rate of interest or dividend before or on the day sections 7, 8, 10, 11, 12 and 23 of the *Co-operative Corporations Statute Law Amendment Act, 1992* come into force, the rate of interest or dividend paid under the agreement shall be as specified in the agreement. O. Reg. 495/92, s. 1.

#### PREScribed MAXIMUM PREMIUM

**12.3** For the purpose of subsection 30.1 (3) of the Act, the premium payable on the purchase for cancellation or redemption of a share of a class of preference shares shall not exceed the greater of,

- (a) the par value of the share multiplied by 10 per cent per annum compounded annually, calculated from the date the first share of the class was issued to the date of purchase for cancellation or redemption of the share; and
- (b) the par value of the share multiplied by the percentage increase in the Consumer Price Index for Canada (all items), as published by Statistics Canada under the *Statistics Act* (Canada), calculated from the month during which the first share of the class was issued to the month during which the share is purchased for cancellation or redeemed. O. Reg. 234/95, s. 4.

## CONTINUOUS DISCLOSURE

**12.4** (1) Every co-operative that has issued securities under an offering statement to non-members shall send each of them a material change statement concurrently with the financial statements required under section 141 of the Act to be filed with the Superintendent. O. Reg. 234/95, s. 4; O. Reg. 318/98, s. 3.

(2) The material change statement shall contain a copy of the financial statements and the auditor's report, if any, sent to each member. O. Reg. 234/95, s. 4.

## ARBITRATION BY DISSENTING SHAREHOLDERS

**12.5** (1) If a shareholder dissents as to the price at which a co-operative proposes to purchase for cancellation or redeem shares under subsection 32.1 (1) of the Act, the price shall be determined by arbitration by one person chosen by both the co-operative and the shareholder. O. Reg. 234/95, s. 4.

(2) If the co-operative and shareholder cannot agree on a single arbitrator, the arbitration shall be by a panel of three persons. O. Reg. 234/95, s. 4.

(3) An arbitration panel shall be comprised of one person nominated by the co-operative, one person nominated by the shareholder and one person selected by the two nominees. O. Reg. 234/95, s. 4.

(4) The *Arbitrations Act* applies, with necessary modifications, to arbitrations under this section. O. Reg. 234/95, s. 4.

## EXEMPTIONS FROM OFFERING STATEMENTS

**12.6** Subsection 34 (1) of the Act does not apply to the following shares and debt obligations of a co-operative:

1. Shares issued to members if the value of such an issue does not exceed \$1,000 per member in a year and does not exceed an aggregate value of \$10,000 per member.
2. Debt obligations issued to members if the value of such an issue does not exceed \$1,000 per member in a year and does not exceed an aggregate value of \$10,000 per member.
3. Shares issued under subsection 56 (1) of the Act.
4. Debt obligations issued under subsection 56 (4) of the Act.
5. Stock dividends issued under section 59 of the Act.
6. Securities issued by the co-operative to its members, if the offering does not result in the co-operative having more than \$200,000 of issued and outstanding securities.
7. Securities issued by the co-operative to Her Majesty in right of Canada or a province or territory of Canada.
8. Securities issued by the co-operative to a municipal corporation, public board or commission in Canada.
9. Securities issued by the co-operative to a bank listed in Schedule I or II to the *Bank Act* (Canada) or to the Business Development Bank of Canada.
10. Securities issued by the co-operative to a loan or trust corporation registered under the *Loan and Trust Corporations Act*.
11. Securities issued by the co-operative to a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
12. Securities issued by the co-operative to an insurance company licensed under the *Insurance Act*.
13. Securities issued by the co-operative to a subsidiary of a corporation described in paragraph 9, 10, 11 or 12 if the corporation owns all of the voting shares of the subsidiary.
14. Securities issued by the co-operative to a dealer registered under the *Securities Act* as a broker, investment dealer or securities dealer. O. Reg. 234/95, s. 4; O. Reg. 318/98, s. 4.

## DEFINITION OF "FAIR MARKET VALUE"

**12.7** For the purpose of subsection 56 (5) of the Act, "fair market value", of the shares, means the greater of,

- (a) the par value of the shares, and
- (b) the price that a buyer would pay to a seller, both acting prudently, knowledgeably and willingly, in an arm's length transaction in an open market under conditions requisite to a fair sale. O. Reg. 234/95, s. 4.

## DEFINITION OF "FAIR VALUE"

**12.8** For the purpose of subsection 69 (3) of the Act,

“fair value” means the price that a buyer would pay to a seller, both acting prudently, knowledgeably and willingly, in an arm’s length transaction in an open market under conditions requisite to a fair sale. O. Reg. 234/95, s. 4.

**12.9** For the purposes of clauses 64 (3) (a), 64 (5) (a) and subsection 66 (6) of the Act,

“prescribed shares” means preference shares that provide that the co-operative is not obliged to redeem the shares. O. Reg. 234/95, s. 4.

**13.** REVOKED: O. Reg. 318/98, s. 5.

#### AUDITORS AND FINANCIAL STATEMENTS

**13.1** For the purposes of clause 123 (1.1) (b) of the Act, the capital, assets or gross revenue or sales of a co-operative shall not exceed \$500,000 each for the year in which the audit exemption is claimed. O. Reg. 495/92, s. 1.

**14.** REVOKED: O. Reg. 318/98, s. 5.

**15.** REVOKED: O. Reg. 318/98, s. 5.

**16.** REVOKED: O. Reg. 318/98, s. 5.

#### ARTICLES OF DISSOLUTION

**17.** Articles of dissolution under subsection 164 (1) of the Act must be accompanied by a consent of the Corporations Tax Branch of the Ministry of Finance to the dissolution of the co-operative. O. Reg. 318/98, s. 6.

#### REVIVAL

**18.** An application for an order of revival under subsection 167 (3) of the Act must be accompanied by,

- (a) a consent of the Corporations Tax Branch of the Ministry of Finance to the revival of the co-operative; and
- (b) a written statement from the Public Guardian and Trustee that he or she does not object to the revival of the co-operative. O. Reg. 318/98, s. 6.

#### EVIDENCE OF SOLVENCY

**19.** For the purposes of subsection 153 (2) and subsection 157 (2) of the Act, evidence that the co-operative is not insolvent shall consist of,

- (a) affidavits of two officers or of one officer and one director stating that in their opinion the co-operative is not insolvent within the meaning of subsection 1 (5) of the Act; and
- (b) such other evidence as the Minister may require. R.R.O. 1990, Reg. 178, s. 19.

**20.** For the purposes of subsection 153 (3) of the Act, evidence that the co-operative is not insolvent and that the decrease of the authorized or issued capital will not render the co-operative insolvent shall consist of,

- (a) affidavits of two officers or of one officer and one director stating that in their opinion the co-operative is not insolvent and that the decrease of the authorized or issued capital will not render the co-operative insolvent within the meaning of subsection 1 (5) of the Act; and
- (b) such other evidence as the Minister may require. R.R.O. 1990, Reg. 178, s. 20.

**20.1** REVOKED: O. Reg. 318/98, s. 7.

#### RESTRICTIONS ON ELECTRONIC NOTICE

**21.** The following circumstances are prescribed under clause 172 (1) (b) of the Act as circumstances in which a notice or other document cannot be sent electronically by a co-operative to a member or director:

- 1. If the co-operative is a non-profit housing co-operative. O. Reg. 414/07, s. 3.

**22.** The following circumstances are prescribed under clause 172 (2.1) (b) of the Act as circumstances in which a notice or other document cannot be sent electronically by a member or director of a co-operative to the co-operative:

- 1. If the co-operative is a non-profit housing co-operative. O. Reg. 414/07, s. 3.

**23.** REVOKED: O. Reg. 318/98, s. 7.

#### MISCELLANEOUS

**24.** (1) For the purposes of the definition of “certified copy” in subsection 1 (1) of the Act, the Superintendent and his or her delegate, if any, are designated as persons authorized to certify a copy of a document to be a true copy. O. Reg. 318/98, s. 8.

(2) For the purposes of subsection 182 (1) of the Act, the Superintendent and his or her delegate, if any, are the officers of the Ministry who are designated as persons authorized to sign certificates. O. Reg. 318/98, s. 8.

SCHEDULE REVOKED: O. Reg. 318/98, s. 9.

FORMS 1-3 REVOKED: O. Reg. 318/98, s. 10.

FORMS 4, 5 REVOKED: O. Reg. 234/95, s. 7.

FORMS 6-16 REVOKED: O. Reg. 318/98, s. 10.

[Back to top](#)