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Preparing for the Societies Act

What Farmers' markets needs to know about the new legislation in BC

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Overview

- brief background on the *Societies Act*
- constitution and bylaws
- member funded society status
- good news
- significant changes
- transition methodology

Background

- Societies Act is in force NOW
 - since November 28
- applies to your society immediately
 - compliance required today
 - 5 deferred sections to be discussed
- bylaws that are inconsistent are “of no force or effect”
- transition process to occur over 2 years

General Comments

- modernizes the Act in a number of beneficial ways
- relaxes certain rules for society that do not receive significant public funding
- increases governance flexibility
- greater public transparency
- increased member rights and participation

- the result – **it's longer!**

Constitution and Bylaws

- constitution will have **name, purposes** and (if resolved) **statement** for “member funded societies”
- **everything else must be in bylaws**
 - dissolution, member benefit, location of operations
 - moved on transition
- no more unalterable provisions
 - moved to bylaws and identified as previously unalterable
 - can be altered by special resolution

What is a Member Funded Society?

- new concept
- receive funds **predominantly from internal sources**
 - member dues/fees
 - contributions from insiders
 - earned revenues (social enterprise)
 - income from property (investment income, rent, royalties, etc.)
- designed with professional groups, associations, clubs

Member Funded Societies Qualifications (cont.)

- cannot qualify if receives **public donations, government funding** or **combination** over prescribed external funding threshold being:
 - the greater of:
 - \$20,000 or
 - 10% of gross income,
 - calculated over the period comprising the 2 fiscal years immediately preceding the current fiscal year

Some Good News

- electronic transition
 - “transition” wholly electronic
 - No paper transition method
- electronic filings
 - annual report – 30 days of AGM, or Jan. 31 if none held (dissolution if miss 2 x)
 - change of directors, change of address, alteration of constitution or bylaws

Some Good News (cont.)

- special resolution **default threshold lowered to 2/3**
- can be increased to higher threshold by bylaws (up to unanimous consent) - not recommended
 - implications for current bylaws
- removes the requirement to obtain a special resolution if security required when borrowing

Some Good News (cont.)

- **clear requirements for corporate record-keeping**, including:
 - certificate of incorporation, certified copies of constitution, bylaws, statement of directors and address
 - all other documents provided by the registrar
 - orders regarding society (court, tribunal or regulatory)
 - register of directors, including contact information
 - consents of directors
 - disclosure of interest
 - register of members, with contact information
 - minutes of members' meetings
 - copies of ordinary and special resolutions in writing
 - financial statements

Record Keeping (cont.)

- also required:
 - directors' meeting minutes
 - directors resolutions in writing
 - “adequate accounting records for all fiscal years, including record of each transaction materially affecting the financial position of the society”
- list does not replace what is required by CRA or under other statutory or regulatory regimes

Access to Records

- directors have access to all required documents
- members have access to all required documents, unless bylaws restrict
- can only limit access to the records on the second page, not the first
- must be in bylaws
- why? concerns arise re: privacy, sensitive information (donors!), employment issues, solicitor-client privilege
- society can impose reasonable fee and reasonable notice and times for inspection

Significant Changes

- changes in governance/ management
 - changes in membership rights
 - changes in membership meetings
 - other changes
-
- overall – greater public transparency and clearer rules for governance

Statutory Qualifications for Directors

- 18 years or older
 - unless bylaws permit 16-17 years old
 - majority must always be 18+
- not:
 - found incapable by a court
 - undischarged bankrupt
 - convicted of certain criminal offences in past 5 years without a pardon
- can set out additional qualifications in bylaws
- director who ceases to be qualified must resign
 - non-compliance is an offense
- section does not apply till 2018

Directors Taking Office

- increases governance flexibility
- bylaws must clearly provide how individuals are elected or appointed to the board
 - can include ex-officio or third party appointed directors, if bylaws provide
- director terms and term limits must also be clear in bylaws
 - default if not specified is one year terms (not recommended!)

Consents to Act

- directors must confirm they consent to act as a director
 - standard for corporate legislation
- 2 ways
 - be present at meeting where elected and not refuse the office
 - sign a written Consent to Act form
- section does not apply till 2018

Director Removal

- to date, requires special resolution
- new legislation will allow special resolution and another method provided in the bylaws (if any)
 - board resolution, ordinary resolution, deemed resignation, etc.
 - consider carefully whether you want this ability – could be abused to silence dissent

Conflict of Interest

- expanded rules
- directors with **direct or indirect material interest** in a contract or transaction with society, or a matter for consideration by the board, must:
 - fully disclose the nature and extent of the interest
 - abstain from voting on resolution
 - leave board meeting when discussed, unless asked to provide information
 - leave board meeting when vote occurs, regardless
 - not take any actions intended to influence the discussion or vote

Senior Manager

- new concept
 - one or more individuals appointed by the directors to exercise the directors' authority to manage the activities or internal affairs of the society as a whole or in respect of a principal unit of the society
- key is appointment by the directors
 - not hired by CEO/management/staff
- could be an employee, contractor or a volunteer
 - Ex. CEO, COO, CFO

Senior Manager

- same qualifications as for directors
- appointing a senior manager does not create contract rights or affect existing rights
- fiduciary duties imposed on senior manager
 - overlap with employment duties (if employee)
- disclosure of conflicting interests in contracts or transactions
 - same process as directors
- access to indemnification provisions, due diligence defence, etc.

Director Remuneration and Employment

- a society **must not pay remuneration** to directors for serving as director **unless its bylaws permit**
 - applies to all societies
- a society **may reimburse directors** for reasonable expenses incurred in the course of duties **unless its bylaws restrict**
- directors may be employees or provide services under contract, provided that a majority of the board must not be employed or under contract for services
 - member funded societies exempt
 - NOT a good governance standard to have directors as employees
- section does not apply till 2018

Reporting on Remuneration

- new requirement
- note to annual financial statements that sets out:
 - remuneration paid to directors, if any;
 - listed by position (or name), breaks out director remuneration and other remuneration
 - remuneration paid to employees or contractors for services over \$75,000
 - listed by position (or name) or nature of services
 - if more than 10 above \$75,000, report top 10
 - can list all as one total pooled amount and number of persons.
- member funded societies exempt

Member Complaints

- member may apply to court if society operated in manner oppressive or unfairly prejudicial to the member
- court has wide discretion re: remedies
 - order actions by society
 - prohibit actions by society
 - regulate activities,
 - set aside transactions or resolutions,
 - provide information,
 - correct records,
 - appoint receiver,
 - pay compensation, or
 - even to be dissolved

Timing of AGM

- must hold AGM
 - in each calendar year
 - within 6 months of fiscal year end
- can obtain permission to hold no later than March 31 of next year
- AGM not required in calendar year of incorporation



Location and Mode of AGM

- AGM can be:
 - physical (all present in person) at a location bylaws provide
 - partially electronic (some participating remotely)
 - wholly electronic (no common physical location – all participants participating remotely via shared technology platform)
- all participants must be able to communicate with each other and any votes must adequately disclose the intentions of the voters

Notice of AGM - Timing

- not less than 14 days (default) or, if bylaws specify, as few as 7 days before the AGM
- not more than 60 days before the AGM
- a member can waive notice in any manner
 - attendance is deemed waiver

Notice of AGM – Method

- notice must be “sent” to every member:
 - in the manner agreed on,
 - in the manner provided in the bylaws, or
 - failing both, by mail, delivery or e-mail (if an address has been provided)

Notice of AGM - Content

- date, time and location of meeting
- must include the text of any special resolution to be presented at the meeting
 - more restrictive

Transition

- 2 year period to transition
 - begins November 28, 2016
- transition completed online
 - type or cut-paste and file:
 - constitution (new form)
 - bylaws that contain
 - pre-transition bylaws
 - other clauses from constitution, incl. unalterable
 - reporting society provisions
 - notice of current directors and registered address

Transition (cont.)

- legislation requirements apply immediately as of **November 28, 2016**
 - Exception - application to existing societies of certain sections re: directors delayed until conclusion of transition period
- member approval not required to transition unless:
 - seeking member funded society status, or
 - amending bylaws as part of transition
 - board approval??
- failure to transition may result in dissolution after the period is over

Transition (cont.)

- failure to transition may result in dissolution after November 28, 2018
- member approval not required to transition unless:
 - seeking member funded society status, or
 - amending bylaws as part of transition
- board approval recommended

Prepare to “onboard”

- societies must “*onboard*” before “*transition*”
 - “*onboarding*” means the BC Corporate Registry’s process for a society to create and log into its own account on the new online filing system

How to Onboard

- Each society must:
 - receive a letter from BC Corporate Registry containing:
 - a website address to access the online Transition Application
 - a KEY unique for each society
 - obtain a BCeID to login to the URL
- once onboarding complete, can link other BCeIDs to a society's account
 - *Caution:* unlink BCeIDs of persons no longer associated with society

Transition

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 - constitution (new form)
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 - pre-transition bylaws
 - other clauses from constitution, incl. unalterable
 - reporting society provisions (if applicable)
 - notice of current directors and registered address

What to do now?

- consolidate bylaws into one electronic document
- confirm society's registered address is correct
- ensure all annual maintenance filings up to date
 - ex. changes in directors, annual reports, fees, and any unfiled special resolutions
- decide who will be responsible to onboard and transition society

What to do now? (cont.)

- decide when to transition and if you want/need to amend your bylaws and/or constitution
 - important - current bylaws “of no effect” if non-compliant with new legislation
- 3 options
 - current bylaws compliant – no changes required (unlikely)
 - amend bylaws at transition
 - approve before transition on November 28, 2016 and hold for filing
 - amend a.s.a.p. after transition (some risk)

Resources

- BC Corporate Registry's website on the new Societies Act:
 - <http://www2.gov.bc.ca/gov/content/employment-business/business/not-for-profit-organizations/societies/new-societies-act>
- BCeID:
 - <https://www.bceid.ca/register/>

Transition (cont.)

- **current bylaws “of no effect” if non-compliant**
 - model bylaws to accompany legislation inadequate for many governance models
- review and update of bylaws is important
 - several options
 1. current bylaws fully compliant – no changes required
 2. amend and file bylaws before November 28
 - 2 stage process
 - where there are more urgent changes required
 3. amend bylaws at transition
 - Pre-approve and hold for filing (1 stage process)
 - Could be pre-Nov. 28 or post
 4. transition with current bylaws and amend later (some risk)

Questions

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