

MGA Review Discussion Paper

Controlled Corporations

This technical document is part of a series of draft discussion papers created by Municipal Affairs staff and stakeholders to prepare for the Municipal Government Act Review. It does not reflect existing or potential Government of Alberta policy directions. This document is the result of a careful review of what is currently included in the Municipal Government Act (MGA) and regulations, definitions of terms and processes, changes requested by stakeholders over the last 18 years, some highlights from other jurisdictions, and identification of potential topics for discussion during the MGA Review. This information will be used to prepare consultation materials as the MGA Review proceeds.

These discussion papers have been reviewed and approved by the MGA Stakeholder Advisory Committee, comprised of representatives from major stakeholder organizations: Alberta Association of Municipal and Counties, Alberta Association of Urban Municipalities, Alberta Rural Municipal Administrators Association, Alberta Chambers of Commerce, City of Calgary, City of Edmonton, and Local Government Association of Alberta.

The Government of Alberta is asking all Albertans to directly contribute to the MGA Review during online consultation in late 2013 and consultation sessions throughout Alberta in early 2014. This technical document is not intended for gathering stakeholder feedback, but to generate thought and discussion to prepare for the upcoming consultation. Public engagement materials will be available in early 2014. To learn more about how you can join the discussion on how we can build better communities, please visit mqareview.alberta.ca/get-involved.

Preamble



The *Municipal Government Act (MGA)* provides the legislative framework to guide the operations of municipalities in Alberta. The current *MGA* empowers municipalities with the authority and flexibility to provide services in the best interests of the community. The *MGA* Review will proceed along three major themes: *governance*; *assessment and taxation*; and *planning and development*.

This paper is one of 12 discussion papers exploring aspects related to the *governance* theme. It focuses on the Province's legislated powers under the *MGA*. The objective of each discussion paper is to

- 1) Outline the existing legislation,
- 2) Identify issues with specific aspects based on stakeholder requests
- 3) Look at how other jurisdictions are approaching these issues; and
- 4) Pose questions to help formulate future analysis of, as well as public and stakeholder engagement on the *MGA*.

Below is a list of the papers that relate to the governance theme.

- Municipal Powers
- Provincial Powers
- Municipal Structures
- Municipal Governance
- Municipal Administration
- Financial Administration
- Liability and Risk Management
- Service Provisions
- Controlled Corporations
- Regional Service Commissions
- Compliance and Accountability
- Special Areas and Improvement Districts

Controlled Corporations

Municipally controlled corporations are private corporations where a municipality (or group of municipalities) holds more than 50 per cent of the votes in electing directors of the corporation.

A controlled corporation may be formed to provide services, facilities or other things necessary or desirable for a municipality. For example, these corporations can provide services such as water and waste management, electricity and gas distribution. They are similar to other privately owned business corporations, but must comply with specific requirements under the *MGA* and the *Control of Corporations Regulation*. Municipalities may work with controlled corporations to:

- expropriate land for development purposes on behalf of a controlled corporation;
- lend money to, or guarantee a loan to, one of its controlled corporations provided the loan doesn't exceed the municipality's debt limit; and
- grant an exclusive right to the controlled corporation to provide utility services in all or part of the municipality for up to 20 years.

Controlled corporation services, delivered within the municipality that owns it, are often exempted from the Alberta Utilities Commission utility rate approvals.

The *MGA* stipulates that municipally controlled corporations must prepare annual financial statements. A municipality may not appoint a councillor, an employee of the municipality, or an employee of one of its controlled corporations to be an auditor. The majority of direction given to a controlled corporation is set out in the *Control of Corporations Regulation*, which outlines:

- the process a municipality must follow in order to obtain ministerial approval for acquisition of a controlled corporation (*note*: the *MGA* exempts EPCOR and ENMAX subsidiaries from this process, as EPCOR and ENMAX were formed prior to these rules being in place);
- the powers and scope of a municipally controlled corporation during and after its establishment, in regard to assets acquisition of existing municipal services, regional service provisions, partnership agreements with other entities, and its relation to municipal services;
- the restrictions placed on controlled corporations regarding asset ownership, debt levels, and municipal dependence;
- the conditions for the disposition of a controlled corporation; and
- immunity for the provincial government from any damages related to a controlled corporation's decisions.

The following table provides a list of all municipally controlled corporations currently operating in Alberta:

Municipally Controlled Corporations	Purpose
Airdrie Mainstreet Square Real Estate Inc.	Commercial property management
Beaver Regional Industrial Services Corp	Energy for industrial commercial purposes
ENMAX	Electricity generation, green power, retail of gas and electricity
Calgary Land Management Corporation	Commercial property management, and redevelopment of the Calgary Rivers District
1494493 Alberta Ltd.	Operates and maintains a connector road
878947 Alberta Ltd.	Property management and land redevelopment
EPCOR Utilities Inc.	Electricity generation/distribution. Water Services
Aquatera Utilities Inc.	Provides water and wastewater services to several municipalities and hamlets in the Grande Prairie metropolitan area
Newell Regional Services Corp.	Provides water and sewer utility services to several municipalities within the County of Newell
NEW Water Ltd.	Provides potable water services to residents by a transmission pipeline in Northern Sunrise County
Allied and Gas Corp.	Established to make timely acquisitions of oil and gas reserves for the City of Medicine Hat's utility operations
Aqueduct Utilities Corporation	Provides potable water services to business and residents within Rocky View County
The Town of Swan Hills Registries Corporation	Established and operates as an Alberta Registries Office in the Town of Swan Hills
109226 Alberta	Established to acquire a gravel source for municipal purposes in Wheatland County
Chestermere Utilities Inc.	Manages, operates, and supplies water, wastewater, storm water management and solid waste for the Town of Chestermere
Alberta Central East Water Corporation	Created for the purposes of owning and operating a water transmission system that will feed potable water from a transfer station in Vegreville to the thirteen municipalities and surrounding communities

Discussion Points

Below are some discussion topics and questions based on a review of requested amendments, cross jurisdictional research and issues raised by stakeholders.

The requested amendments discussed below draw upon an inventory of requests received by the Province over the past 18 years. It important to note these requests:

- i) do not include all the requests Municipal Affairs has received in the past 18 years;
- ii) do not necessarily represent the views of most Albertans;
- iii) do not necessarily apply to all municipalities; and
- iv) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

1. Complementary Goals

Background

A municipally controlled corporation is a privately owned entity whose goals, according to provisions in the MGA and *Control of Corporations Regulation*, are to:

- 1) carry out business for a municipal purpose; and
- 2) make a profit.

Some have suggested these two goals are not always complementary. Profit-oriented decisions may carry unforeseen risks that could outweigh or undermine the corporation's benefit to a municipality. Some examples of these risks include financial difficulties due to investments, the influence of profit on cost-benefit analyses interpretations, and the creation of foreign subsidiary companies to further profits. The MGA and the *Control of Corporations Regulation* attempt to mitigate these risks by requiring a ministerial review of the corporations' ownership proposals. Further ministerial approval is required to create a subsidiary or operate outside Alberta's borders.

Cross-jurisdictional Research

- With the exception of the Yukon, Nova Scotia, and New Brunswick, all Canadian jurisdictions allow municipalities to hold a controlling interest in corporations. Some of these jurisdictions limit controlled corporations to the provision of public utility services (e.g. Manitoba), while others allow municipalities to create corporations for a variety of purposes (e.g. British Columbia).
- Queensland State, Australia, prohibits municipalities from involving themselves with Unlimited Liability Corporations (i.e. corporations that do not protect their shareholders from corporate liability).
- New Zealand's equivalent to controlled corporations, called council-controlled organizations, must have "Statements of Intent" which identifies the corporations' activities and intentions for the year and the objectives to which those activities will contribute.

Stakeholder and Legislative Amendment Requests

- Municipal Affairs has received requests from municipalities recently to allow controlled corporations to operate and create subsidiaries overseas.

2. Competitiveness

Background

In the past, questions have been raised about fair competition between municipally controlled corporations and the private sector.

Cross-jurisdictional Research

- Manitoba allows municipalities to make grants to their municipal participation corporations (which are entirely owned by one or more municipalities).
- Queensland State, Australia, requires municipalities who run businesses to operate pursuant to a “competitive neutrality principle,” which stipulates that a municipally run business may “not enjoy a net advantage over competitors only because the entity is in the public sector.”

Stakeholder and Legislative Amendment Requests

- Municipal Affairs has received requests from some stakeholders requesting that controlled corporations be permitted to operate in foreign jurisdictions.
- Some businesses have raised concerns regarding competitive fairness between municipally controlled corporations and private sector business. Concerns from competing businesses include that controlled corporations:
 - may be granted a monopoly over services provided within a municipality;
 - may be exempt from paying corporate income taxes in some situations (under the federal *Income Tax Act*);
 - may indirectly receive provincial and other public funds from their municipal shareholders; and
 - may in some instances, receive exemptions from certain Alberta Utilities Commission rate approvals.

3. Oversight and Transparency

Background

Although the controlling interest in municipally controlled corporations is maintained by municipalities, their day-to-day operations occur at arm’s length. As these corporations are privately operated, they are not subject to the same transparency requirements that apply to municipalities. This facilitates a level playing field, in terms of competitiveness, between municipally controlled corporations and corporations in the private sector; however, the lack of transparency limits municipal and public awareness and input into key aspects of the controlled corporation’s service delivery.

Cross-jurisdictional Research

- In British Columbia, the Office of the Auditor General for Municipal Government has the legal right to conduct internal audits of a municipally controlled corporation.

- In Ontario's legislation, municipally appointed Integrity Commissioners monitor the ethical conduct of controlled corporation board members and report back to Council, while the ombudsman may investigate any decision or recommendation made by the controlled corporation.
- In New Zealand, directors of council-controlled organizations have a duty "to assist the organisation to meet its objectives and any other requirements in its statement of intent." Decisions made must be consistent with the statement of intent. Local governments are expected to regularly monitor the performance of their council-controlled organizations.

Stakeholder and Legislative Amendment Requests

- Municipal Affairs has received complaints from municipalities that on some occasions, councillors acting as controlled corporation directors refuse to explain or discuss before council their activities with the corporation. These actions derive from provisions in the *Businesses Corporations Act*, which requires directors to act in the best interests of the corporation.

4. Dissolution or Sale of Controlled Corporations

Background

The dissolution of a controlled corporation is currently addressed through the *Business Corporations Act*. Under this Act, dissolution of a controlled corporation may result in its assets being sold to non-municipal buyers. This could result in key municipal infrastructure, built with public funds, becoming privatized and consequently outside of the municipality's control.

Cross-jurisdictional Research

- No dissolution or sale provisions for municipally controlled corporations were identified in the municipal acts of other Canadian jurisdictions.

Discussion Questions



1. *How should controlled corporations be managed to ensure suitable model for service delivery?*
 - a) What services and conditions are best suited for controlled corporations?
 - b) What is the appropriate scope for a controlled corporation's operations to ensure a complementary relationship between the municipality and the private business interests of the controlled corporation?
 - c) What other provisions may be considered in the *MGA* to ensure municipally controlled corporations and other private corporations compete with each other on a level playing field?

2. *Who should oversee the operation of controlled corporation (e.g. councillors, the minister, or business organizations)?*
 - a) What is the best way to provide oversight of municipally controlled corporation decisions and recommendations?
 - b) What should the primary duty be for municipally appointed directors (i.e., duty to their council and electorate, or to the controlled corporation)? How should the *MGA* address this?
 - c) What, if any, provincial approvals should be required for the establishment of a municipally controlled corporation?

3. *How should the MGA address the disestablishment of a controlled corporation with respect to the distribution of liabilities (e.g. debts) and assets (e.g. lagoons, landfills, pipelines, and property)? NOTE: the Business Corporations Act is currently the primary vehicle for dissolution.*