

Government Proposes Changes to Modernize Ontario's Corporate Framework

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On October 6, 2020, the Government of Ontario introduced Bill 213, *Better for People, Smarter for Business Act, 2020* (Bill). If passed, the Bill will amend the Ontario *Business Corporations Act* (OBCA) by (1) eliminating director residency requirements for private and public corporations and (2) lowering the approval threshold for written ordinary resolutions of private corporations. These changes are part of Ontario's plan for recovery, renewal and long-term economic growth. The Bill is currently in the second reading stage of the legislative process.

Director Residency Requirement

Currently under the OBCA, at least 25 percent of the directors of a corporation must be resident Canadians. This requirement has often presented a challenge for foreign businesses to incorporate in Ontario, despite having operations, employees and facilities located in Ontario. If enacted, the Bill will eliminate the director residency requirement for both private and public corporations, a significant change that will make Ontario a more attractive jurisdiction for foreign businesses to incorporate. This change will align Ontario with British Columbia, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Yukon, Northwest Territories, and Nunavut. Alberta also recently repealed the Canadian resident director requirement, although the change has yet to take effect. Corporations incorporated under the federal *Canada Business Corporations Act* will still have to meet the 25 percent Canadian resident director requirement.

Written Ordinary Resolutions

Under the OBCA written ordinary resolutions must be signed by all of the shareholders entitled to vote on the resolution at a meeting of the shareholders. In other words, in order for a corporation to pass a written ordinary resolution in lieu of a meeting, unanimous shareholder approval is required. Depending on the number of shareholders a corporation has, obtaining every shareholder's signature can prove a costly and time-consuming process for many corporations. If a corporation is unable to secure the signature of any one voting shareholder, a shareholder meeting must be called, resulting in additional time and expense.

If passed, the Bill will lower the approval threshold for written ordinary resolutions of private corporations from unanimity to a majority of the shareholders entitled to vote on the resolution at a meeting of the

shareholders. The new approval threshold, will make it easier for shareholders to approve corporate actions requiring an ordinary resolution, that is, a resolution passed by a simple majority of the votes cast. This includes matters such as adopting new by-laws, appointing an auditor and electing directors. Any voting shareholders that did not sign a written resolution must be provided with notice of the resolution within 10 days following the passing of the resolution.

The proposed amendment will not apply to more fundamental corporate actions that require approval by special resolution (a resolution passed by two thirds of the votes cast), such as amalgamations, amending a corporation's articles, the sale of all or substantially all of the assets of a corporation, and dissolutions. Any such resolutions will still require either a resolution passed by two thirds of the votes cast at a meeting, or a resolution consented to in writing by all shareholders entitled to vote on the matter.

The proposed amendment would also not apply to the requirement to obtain a written waiver from each shareholder of a private OBCA corporation in order to relieve the corporation of the obligation to appoint an auditor and prepare audited financial statements.

Where a corporation's articles or a unanimous shareholder agreement require a greater number of votes of shareholders to effect a particular action by ordinary resolution, the number required under the corporation's articles or USA will prevail. If these changes are implemented, Ontario corporations should review their articles and unanimous shareholders agreements to determine if any changes are warranted to conform with the new requirements.

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