

SUMMARY OF MODIFICATIONS MADE TO THE *CANADA BUSINESS CORPORATIONS ACT*

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After extensive consultation and in a process that began a few years ago, the federal government has modified the *Canada Business Corporations Act* ("CBCA"). The CBCA had not been amended in any significant fashion since it was first adopted in 1975. Concern by the government about the commercial efficiency of the CBCA led it to consider changes as early as 1994.

In March 2000, Bill S-19 was tabled in the Senate. This Bill was replaced by Bill S-11, which received royal sanction on June 14, 2001 and came into force on November 24, 2001 to become *An Act to Amend the Canada Business Corporations Act and the Canada Cooperatives Act and to Amend other Acts in Consequence*.

The principal objective of this legislative update was to modernise the CBCA in order to improve the international competitiveness of Canadian corporations.

It is interesting to note that the CBCA, as amended, frequently refers to the *Canada Business Corporations Regulations* (the "Regulations") which gives the CBCA more flexibility since the Regulations are easier to modify. This will facilitate a more regular updating of the CBCA.

The following is a brief summary of modifications made to the CBCA.

DIRECTORS RESIDENCY

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Subject to any exceptions, the requirement that the majority of directors on the board of a corporation be "Canadian residents" has been reduced to 25%. The same rule applies to the quorum sought by the board of directors in order to conduct business at a board meeting. Moreover, the committee's requirement of residency has been abolished. The by-laws of a corporation must therefore be modified accordingly.

ACCEPTANCE OF OFFICE BY DIRECTORS

From now on, an elected director must consent to his office either (i) tacitly, if he is present at the meeting electing him as director, (ii) expressly, in writing before the meeting or within ten (10) days after his election or (iii) implicitly, by fulfilling the duties of director.

NOTICE OF CHANGE OF ADDRESS OF DIRECTORS

It is now mandatory that a director inform the corporation of any change of address and the corporation must advise Industry Canada of such change within 15 days of the receipt of any notice to that effect.

MEETING OF DIRECTORS

Directors may now attend meetings of the board of directors by way of electronic means.

MEETING OF SHAREHOLDERS

It is now possible to hold a shareholders' meeting in a foreign place without having to obtain the unanimous consent of the shareholders as long as the articles of the corporation provide for such possibility.

Shareholders may attend or participate in meetings by way of electronic means and can also vote at such meetings if this possibility is provided for in the corporation's by-laws.

Moreover, non-distributing corporations can now reduce the time limit for receiving a notice of a meeting of shareholders which is fixed at between 21 and 60 days before the meeting.

To conclude, the corporation may henceforth set a reference date to determine which shareholders will have the right to vote at the meeting.

ELECTRONIC COMMUNICATIONS

In order to facilitate communications with its shareholders, corporations may from now on adopt an electronic communication system for the forwarding and receiving of documents. The corporation must however modify its by-laws, elaborate a policy and obtain the consent of its shareholders for such system.

SHAREHOLDERS' PROPOSALS

New requirements have been imposed on the filing of shareholder proposals which from now on can, subject to certain conditions, be filed by the beneficial owner of shares as well as the registered holder.

Moreover, the deadline for the filing of a proposal has been increased to 90 days prior to the anniversary of the date of the notice for the last annual meeting.

The grounds for refusal to circulate a proposal have been amended and the deadline to refuse such proposal has been increased from 10 to 21 days from receipt of the proposal.

PROXY

Certain changes were made to the rules regarding the solicitation of proxies. These include the modification of the definition of "solicitation" as defined by the CBCA and an increase in the threshold, from 15 to 50 shareholders, under which the corporation may solicit proxies without the need to send out a circular.

PROTECTION OF MINORITY SHAREHOLDERS

The CBCA has changed certain criteria in the law in order to grant minority shareholders additional protection.

UNANIMOUS SHAREHOLDERS' AGREEMENTS

From now on shareholders who have purchased shares without knowledge of the existence of a unanimous shareholders' agreement may cancel the purchase within a specific time limit.

DEFENCE OF DUE DILIGENCE

As for the liabilities of directors and officers, the defence of good faith has been replaced by a defence of "reasonable diligence" particularly in cases of statutory responsibilities, employee wages and the general duty to comply with laws and regulations.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

The CBCA now allows the corporation to advance costs and disbursements related to the defence and indemnification of directors and officers for certain types of law suits. Consequently, the internal by-laws of corporations will have to be amended accordingly.

MODIFIED PROPORTIONATE LIABILITY

In certain cases, it will now be possible to refer to the regime of modified proportionate liability instead of joint and several liability with respect to claims for financial loss arising out of an error or omission regarding financial information that had to be provided for under the CBCA.

FINANCIAL ASSISTANCE

A corporation is no longer required to pass a solvability test in order to have the right to provide shareholders with financial assistance.

REGISTERED OFFICE

The provisions of the CBCA have been modified so that the articles of the corporation may now indicate the province in which the head office of the corporation will be situated instead of the judicial district. The directors will therefore be free to change the registered office within the limits of the chosen province.

CONCLUSION

Notwithstanding certain deficiencies and its conservative approach, this reform represents a positive update bringing Canadian corporations more in line with new commercial trends and international requirements.

The amendments made to the CBCA will require corporations to ensure that their articles and by-laws comply with the changes outlined above.

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