

DOING BUSINESS MORE EFFECTIVELY: ONTARIO PROPOSES CHANGES TO THE BUSINESS CORPORATIONS ACT

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What are the proposed changes?

The Government of Ontario recently introduced Bill 213, *Better for People, Smarter for Business Act*, 2020 to reduce regulatory burdens and remove barriers to economic growth, opportunity and innovation. The Bill, currently in its Second Reading, proposes the following changes to the *Ontario Business Corporations Act* (OBCA):

- removing the rule requiring that at least 25% of the directors on a board be Canadian residents; and
- for private corporations, lowering the voting threshold for written resolutions passed in lieu of a shareholders' meeting from a unanimous vote to a majority one (though only for matters that can be decided by ordinary resolution).

What does this mean for businesses?

By repealing the Canadian residency requirement for directors of all OBCA corporations, there is greater flexibility when it comes to determining the composition of a board. When appointing directors, OBCA corporations will be able to focus on the expertise and suitability of candidates rather than their residency. The proposed change would also bring Ontario in line with other Canadian jurisdictions who have done away with the residency requirement. This would have the effect of encouraging more foreign-owned and controlled companies to incorporate and do business in Ontario.

While not available to offering corporations, private OBCA corporations should see the proposed majority voting threshold as an opportunity to streamline decision-making. By lowering the number of votes required for written shareholders' resolutions passed in lieu of a meeting, the change will remove the costs and other logistical hurdles of calling and organizing a shareholders' meeting when unanimity amongst the shareholders cannot be achieved. As a result, private OBCA corporations will be able to make decisions in a more timely manner, and conduct business more efficiently. Written resolutions will not have to be sent to all of the shareholders to have it passed at the time. However, this does not mean that decisions can be made more flippantly — notice of any resolution passed by majority vote must be given to shareholders who were entitled to vote but did not sign. Furthermore, this proposed change is restricted to decisions that can only be made by ordinary resolution (e.g., the approval of by-laws, election/removal of directors, appointment of auditors, etc.).

What steps should businesses take to prepare for these changes?

The voting threshold for shareholders' resolutions in lieu of meetings will remain subject to any provisions in an OBCA corporation's articles or unanimous shareholder



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agreement that state otherwise. When (and assuming) the proposed changes to the OBCA come into effect, businesses should review their organizational documents to ensure that there is nothing prohibiting them from taking advantage of the flexibility afforded by the new rules in carrying on their business. Conversely, those looking to opt-out and require a higher voting threshold on written resolutions will also benefit from a review of their respective documents