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ARTICLE

Expanded Diversity Disclosure Requirements in 2020 under the CBCA

Beginning on January 1, 2020, all public corporations incorporated under the *Canada Business Corporations Act* (the CBCA) will be subject to expanded diversity disclosure requirements. These new requirements go well beyond the current diversity disclosure requirements regarding women on boards under National Instrument 58-101 *Disclosure of Corporate Governance Practices* and Form 58-101F1 *Corporate Governance Disclosure* (the Current Securities Law Regime). To comply with these new requirements, federally incorporated public companies (including venture issuers) will be required to provide specific information about internal policies and board representation to shareholders either by sending along with the notice of meeting or by making this available with the proxy circular at their next annual meeting held on or after January 1, 2020. This information must also be sent to the Canadian Ministry of Industry.

Legislative Background

On May 1, 2018, Bill C-25, "*An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act*" received royal assent.[1] On June 22, 2019, an order in council set January 1, 2020 as the day that these new expanded disclosure requirements would come into force. The accompanying regulations were published in the Canada Gazette, Part II on July 10, 2019.

Scope

The new amendments expand on the Current Securities Law Regime and its "comply or explain" framework on implementing board diversity policies. Venture issuers, such as those not listed on the TSX, are also subject to the new amendments. Until now, venture issuers were exempted from disclosing any gender diversity information under the Current Securities Law Regime.

The new disclosure requirements provide that starting with their 2020 annual shareholder meetings, federally incorporated public companies must present information to their shareholders about their policies on "designated groups", as the term is defined under the *Employment Equity Act* (Canada). The *Employment Equity Act* defines "designated groups" as being: persons with disabilities, members of visible minorities, women, and Aboriginal peoples.

Information Required as Part of Disclosure

Under the new amendments, federally incorporated public companies must present information to their shareholders on the following:

1. Whether the corporation has a written policy relating to the identification and nomination of directors from the designated groups.
2. If the corporation does not have the written policy as described in (1), the reasons for not adopting such a policy.
3. If the corporation does have a written policy as described in (1), the following information:
    - a short summary of the policy's objectives and provisions;
    - a description of the implementation measures of the policy;
    - a description of the annual and cumulative progress in achieving the objectives of the policy; and
    - whether or not the policy's effectiveness is measured, and if it is, how it is measured.
4. Whether the corporation considers the representation of designated groups when nominating individuals for directors, and if it does, how that is considered, or if it does not, the reasons why.
5. Whether the corporation considers the representation of designated groups when appointing members of senior management, and if it does, how that is considered, or if it does not, the reasons why.
6. The number and proportion, expressed in percentage terms, of directors and senior management from each group referred to in the definition of designated groups, including in its major subsidiaries.[2]
7. Whether there are targets for representation on the board and amongst senior management from members of designated groups, and, if so, the progress in achieving those targets and the annual and cumulative progress in achieving those targets, or, if there are none, the reasons why.
8. Whether or not the corporation has adopted term limits for its directors, or other mechanisms for board renewal, and if it has, a description of such mechanisms, or if it has not, the reasons why.

Implications for Federally Incorporated Public Companies

Because there are no exceptions for venture issuers, there will be an increase in the number of corporations that are subject to diversity disclosure requirements. There are currently over 600 federally incorporated public companies, and 225 of those corporations currently do not disclose any diversity information with their respective provincial securities authority. Under the new amendments, all federally incorporated public companies with no disclosure policies in place must adopt them.

For those corporations subject to the existing disclosure requirements under the Current Securities Law Regime, the scope and extent of their disclosure will be significantly expanded to include information on each of the designated groups.

Federally incorporated public companies will likely have to rely on self-identification by members of designated groups to comply with the new disclosure requirements, as it will likely be difficult for federally incorporated public companies to make that determination independently.

Conclusion

Bill C-25 is receiving a substantial amount of public attention as it contains the first comprehensive changes to the CBCA since 2001. Further amendments to the CBCA are expected to come into force in the near future.

If you wish to discuss these new amendments, please reach out to the authors or your BLG lawyer.

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[1] Please see our recent bulletins: Bill C-25 Approaches Royal Assent and Changes to the *Canada Business Corporations Act*.

[2] Major subsidiaries are defined as those whose assets and revenues are consolidated into the parent's financial statements and account for 30% or more of the consolidated assets or revenues of the parent.

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