

October 13, 2016

## ARTICLE

# Parliament Looks To Enhance Shareholder Democracy And Gender Diversity Disclosure

On September 28, 2016, the Canadian parliament tabled [Bill C-25](#) ("Bill") for first reading which proposes amendments to the [Canada Business Corporations Act](#) ("CBCA"). Of particular interest to reporting issuers incorporated under the CBCA are amendments requiring: (1) changes to voting on the election of directors; and (2) the disclosure of gender diversity among its directors and senior managers.

## 1. Director Election Amendments

The Bill provides for amendments with respect to the process for the election of directors with the reported aim to enhance shareholder democracy and participation for public issuers incorporated under the CBCA. The amendments are as follows:

- **Majority Voting in Uncontested Director Elections** — The CBCA (and applicable Canadian securities laws) currently provides for a plurality voting regime, meaning shareholders can either vote "for" a director nominee or "withhold" support for such nominee. In uncontested elections, a plurality voting regime permits a director to be elected to the board even if they attain less than half of the support of shareholders. In other words, under the current framework of the CBCA, a nominee in an uncontested election can serve as a director with a single vote "for" and irrespective of the number of votes "withheld". The Bill is proposing a majority voting requirement which would require a nominee, in an uncontested election, to obtain the majority support of the shareholders. Majority voting helps to ensure that shareholders as a collective have a greater say in board composition and prevents "[zombie directors](#)" — directors that fail to achieve the majority support of shareholders yet remain with corporate boards — from being elected. The Bill purports to offer shareholders the opportunity to vote "against" directors, however this power is not expressly stated in the current draft of the Bill.
- **Annual Director Elections** — The CBCA currently allows directors to be elected for up to a three-year term (i.e. a term no later than the third annual meeting of shareholders following their election). The Bill is proposing that directors be elected for up to a maximum of a one-year term. This change is based on the premise that annual elections of directors better engage shareholders by requiring them to evaluate the performance of directors on a yearly basis.
- **Individual versus Slate Director Elections** — The CBCA currently allows for directors of public issuers to be elected by slate voting (i.e. electing directors as a group). The Bill is proposing that director nominees will have to be elected individually, meaning slate voting will no longer be available. Individual voting empowers shareholders to express their disapproval with a particular director by withholding support for that director, whereas a slate voting regime would often shield individual directors from such scrutiny.

The corporate governance amendments proposed by the Bill will help to bring the CBCA substantially in line with the Toronto Stock Exchange (TSX) [company rules](#). Public issuers listed on the TSX have been required to hold annual elections and conduct individual voting for directors since December 31, 2012. Further, public issuers listed on the TSX (except majority-controlled issuers) have been required to adopt a majority voting regime since June 30, 2014, with one important exception — TSX company rules permit the board to reject the resignation of an incumbent director within 90 days of failing to obtain majority support, if "exceptional circumstances" warrant that person's continuation on the board. The amendments to the CBCA are not tooled with a similar exception; therefore, incumbent and prospective directors of public issuers operating under the CBCA will need to be sure to attain majority support from shareholders in uncontested elections.

## 2. Gender Diversity Disclosure Amendments

The Bill proposes to amend the CBCA to require public companies to disclose to their shareholders, for every annual meeting, information regarding the gender composition of the company's board of directors and senior management. Additionally, public companies operating under the CBCA will also be required to disclose their diversity policies to shareholders or, alternatively, explain why no such policies have been implemented.

The proposed amendments related to gender diversity disclosure will bring the CBCA in line with Canadian securities regulations in place in most jurisdictions of Canada. [National Instrument 58-101 Disclosure of Corporate Governance Practices](#) requires non-venture public issuers in Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon, to disclose information pertaining to gender diversity on the board of directors and in senior management.

In fact, the Canadian Securities Administrators (CSA) recently published [Multilateral Staff Notice 58-308 Staff Review of Women on Boards in Executive Officer Positions](#), which samples gender diversity data from the disclosure of 677 public issuers with year-ends between December 31, 2015 and March 31, 2016, and compares it to the previous year's disclosure of 722 public issuers having year-ends between December 31, 2014 and March 31, 2015. An overview of the findings is as follows:

- **Number of Women on Boards** — More women have served on the boards of public issuers this year than last year. Specifically, 12% of total board seats were occupied by women this year, up from 11% last year.
- **Policies on Nominating Women to Boards** — 21% of public issuers this year implemented policies which identify and nominate women to their boards, up from 15% last year.
- **Targets for Women on Boards** — 9% of public issuers this year created targets for the number of women they wanted to have serve on the board, up from 7% last year.
- **Gender Diversity as part of the Board Nomination Process** — 66% of public issuers this year disclosed that they considered gender diversity as part of the identification and nominating process for prospective board members, up from 60% last year.
- **Term Limits for Directors** — 20% of public issuers this year set term limits for directors, up from 19% last year.
- **Number of Women in Executive Positions** — The number of women assuming positions as executive officers has remained the same; but 58% of public issuers this year disclosed that the representation of women in executive positions is something they consider when hiring, up from 53% last year.

We expect this trend in increased gender diversity to continue as more jurisdictions adopt applicable rules and legislative amendments are implemented to draw attention to this important issue.

The Bill is only in first reading and is receiving a substantial amount of public attention. It will be interesting to see whether the Bill remains substantially as initially proposed or if changes are made in response to public scrutiny.

If you would like to obtain a copy of the Bill, or wish to discuss the proposed amendments, please reach out to the authors or your usual BLG lawyer.

---

By: Stephen P. Robertson

Services: [Capital Markets](#)

---

## Related Expertise

Capital Markets