

October 26, 2020

ARTICLE

Ontario's Bill 213: Proposed changes to the Business Corporations Act

Update: June 25, 2021

The amendments to the *Business Corporations Act* (Ontario) (OBCA) in Bill 213, the [*Better for People, Smarter for Business Act, 2020*](#), will be proclaimed into force on July 5, 2021.

We recommend that Ontario corporations review their articles, by-laws, shareholder agreements and other constating documents to consider whether reconstituting the board of directors would be desirable in the absence of the Canadian director residency requirement and how the governance process can be more efficient for passing written ordinary resolutions of the shareholders.

Update: December 11, 2020

On December 8, 2020, Bill 213, the [*Better for People, Smarter for Business Act, 2020*](#), received Royal Assent. Bill 213 makes changes to a number of statutes, including the *Business Corporations Act* (Ontario) (OBCA).

Although Bill 213 has received Royal Assent, the amendments to the OBCA in Bill 213 have not yet been proclaimed into force by the Lieutenant Governor.

BLG has covered the two notable changes to the OBCA in Bill 213 in the article below.

It is not clear when the amendments to the OBCA in Bill 213 will be proclaimed into force by the Lieutenant Governor. We will post further updates when the amendments to the OBCA in Bill 213 are proclaimed into force.

On Oct. 6, 2020, the Ontario government tabled Bill 213, the [*Better for People, Smarter for Business Act, 2020*](#), which proposes two notable changes to the *Business Corporations Act* (Ontario) (OBCA):

- removing the minimum Canadian director residency requirement; and
- lowering the approval threshold for a written ordinary resolution of the shareholders to the holders of at least a majority of the shares entitled to vote on that resolution.

Removal of director residency requirement

The OBCA currently requires at least 25 per cent of the directors of an Ontario corporation be resident Canadians. The amendments proposed in Bill 213 would remove the director residency requirement and there would be no minimum number of resident Canadian directors required for Ontario corporations.

The proposed amendments are a welcome change for non-resident investors who want to incorporate in Ontario for business reasons, but are unable to satisfy the director residency requirement without electing an independent director (e.g., lawyer, accountant, etc.) or other individual who they would otherwise not elect as a director but for the director residency requirement.

To avoid the director residency requirements under the OBCA, non-resident investors have frequently been incorporating in other jurisdictions where there is no director residency requirement (e.g., British Columbia, Nova Scotia and Québec), even if there is no other business reason to be incorporated in that jurisdiction. With the removal of the director residency requirements under the OBCA, we anticipate that non-resident investors will again consider Ontario as a preferred jurisdiction when incorporating in Canada.

New approval threshold for ordinary written resolutions of the shareholders

The OBCA currently allows the shareholders of an Ontario corporation to pass a written resolution to approve all matters required by the OBCA to be dealt with at a meeting of shareholders if all of the shareholders entitled to vote on that resolution sign the written resolution. The amendments proposed in Bill 213 would permit non-offering corporations (i.e., private companies) to pass a written resolution of the shareholders signed by the shareholders holding at least a majority of the shares entitled to vote on that resolution (a Majority Written Resolution).

If a non-offering corporation passes a Majority Written Resolution, the corporation must, within 10 business days, give written notice of the Majority Written Resolution to each of the shareholders who did not sign it. The written notice must include a copy of the text of the Majority Written Resolution and a statement containing a description of and reasons for the business dealt with by the Majority Written Resolution.

The proposed amendments apply only to matters under the OBCA that require an ordinary resolution. The proposed amendments do not apply to any matter that requires approval by a special resolution of the shareholders. Where a matter requires approval by a special resolution of the shareholders (e.g., certain additions and reductions to the stated capital account, changes to the corporation's articles, etc.), the matter must still be approved by the

shareholders holding at least two-thirds of the shares entitled to vote on that resolution, or by a written resolution signed by all the shareholders entitled to vote on that resolution.

The proposed amendments are also subject to any provision of the articles or a unanimous shareholder agreement requiring a greater number of votes to approve an ordinary resolution of the shareholders.

Conclusion

We recommend that Ontario corporations review their articles, by-laws, shareholder agreements and other constating documents to consider whether reconstituting the board of directors would be desirable in the absence of the Canadian director residency requirement and how the governance process can become more efficient for passing ordinary resolutions of the shareholders using Majority Written Resolutions.

BLG regularly advises Ontario corporations with respect to all matters related to incorporation, organization and governance. Our lawyers are available to assist with any questions you may have with respect to Ontario corporations and the impact of Bill 213.

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