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Important Changes for Ontario Business Corporations Take Effect on July 5, 2021

By Michael J. Hanley

Effective Monday, July 5, 2021 corporations governed by the *Business Corporations Act* (Ontario) (“OBCA”) will no longer be required to have any Canadian resident directors and non-public OBCA corporations will no longer be required to have all shareholders sign written resolutions to effectively approve ordinary resolutions, it will be sufficient if the resolutions are signed by holders of at least a majority of the voting shares. These changes, which are subject to the additional requirements described below, are designed to modernize certain aspects of the OBCA and, in the case of the change to the director residency requirements, allow Ontario to better compete nationally and internationally as a home for business headquarters.

Elimination of Canadian Residency for Directors

The OBCA has historically required that at least 25% of the directors of a corporation must be resident Canadians but where a corporation has fewer than 4 directors at least one of the directors must be a resident Canadian. This residency requirement is often challenging for foreign businesses looking to incorporate in Ontario, leading many to incorporate in one of the other Canadian provincial jurisdictions, most of which do not have Canadian residency requirements for directors. Beginning on July 5th, 2021 Ontario corporations will no longer be required to have any Canadian resident directors. The elimination of the Canadian director requirement provides foreign businesses with greater flexibility in populating their boards based on criteria more relevant to their businesses than the jurisdiction of residence of their directors, and should increase the rate of incorporations in Ontario by eliminating jurisdiction-shopping associated with the residency requirement.

Resolutions in Writing Signed by Majority

Under current and longstanding OBCA requirements, to be effective, written resolutions of shareholders must be signed by 100% of the shareholders entitled to vote on the resolutions. Alternatively, resolutions of shareholders can be passed at a duly called meeting of shareholders. Sometimes a corporation will not

be able to get all shareholders to sign written resolutions, in which case it will have to hold a shareholders meeting, which typically takes longer and can be more expensive than written resolutions.

Beginning on July 5th, 2021 unanimous approval of written ordinary resolutions will no longer be required and, instead, written ordinary resolutions signed by the holders of at least a majority of voting shares will be effective for Ontario corporations that are not public corporations. However, if the corporation's articles or unanimous shareholders' agreement requires a higher threshold of approval than a simple majority, the corporation must comply with such higher threshold and may not avail itself of the new statutory provisions. This change is designed to make it easier for corporations to obtain required shareholder approvals for relatively simpler matters. The new provisions will not be extended to matters of a more fundamental nature for which the OBCA requires approval by special resolutions. Approval of special resolutions of shareholders in writing will continue to require the signature of every shareholder entitled to vote, or alternatively approval at a duly called shareholders meeting.

While the non-public corporation is not required to present a written ordinary resolution to all of its shareholders for signature, when a resolution in writing is passed under the new provisions the corporation is required to give written notice, within 10 business days after the resolutions have been signed, to all shareholders who were entitled to vote on the resolution but did not sign it. This written notice is required to include the text of the resolution and a statement that contains a description of, and the reasons for, the business dealt with by the resolution.

We suggest that Ontario corporations review their articles, by-laws and unanimous shareholder agreements to determine if any changes to such corporate governance documents are advisable in connection with the aforementioned changes to the OBCA.

For more information please reach out to your usual contact at Torkin Manes or to any member of our Business Law Group.

Michael Hanley is a partner in our Business Law Group. He provides counsel to clients in corporate, securities and M&A transactional matters.

The foregoing is a summary intended for informational purposes and is not intended to be relied on as legal advice pertaining to the subject matter.

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