

# Modernizing the *Ontario Business Corporations Act*

March 11, 2021

On December 8, 2020, the Ontario legislature enacted the *Better for People, Smarter for Business Act, 2020* (the “Act”),<sup>[1]</sup> which provides key amendments to both the *Ontario Business Corporations Act* (“OBCA”)<sup>[2]</sup> and the *Personal Property Security Act* (“PPSA”).<sup>[3]</sup>

## OBCA

Please note that the following amendments are not currently in effect but will come into effect on a date to be proclaimed by the Lieutenant Governor.

The Act implements two important changes to the OBCA:

- eliminating the requirement that 25% of directors of an Ontario corporation be Canadian residents; and
- lowering the approval threshold for written shareholder resolutions passed in lieu of a meeting for private corporations.

### Changes to Director Residency Requirements

Section 118(3) of the OBCA currently requires that at least 25% of the directors of an Ontario corporation shall be resident Canadians, but where the corporation has less than four directors, at least one director shall be a resident Canadian.<sup>[4]</sup> The Act will repeal Section 118(3) of the OBCA entirely and therefore remove the Canadian residency requirement for directors.<sup>[5]</sup>

This provides shareholders of corporations governed by the OBCA with more flexibility to select board members without having to consider the Canadian residency requirement for directors.

### Changes to Resolutions Made in Writing

Section 104(1) of the OBCA currently allow written shareholder resolutions in lieu of voting in person provided such shareholder resolutions are signed by all shareholders.<sup>[6]</sup> This unanimous shareholder signing requirement can be particularly cumbersome where there are a large number of shareholders and often leaves a company with no choice but to convene a shareholder meeting to pass resolutions that often deal with minor matters.

The Act will amend Section 104(1) of the OBCA to only require a *simple majority* of shareholders entitled to vote to approve written resolutions for non-offering corporations.<sup>[7]</sup> However, for those shareholders who did not sign the written resolution, the corporation has an obligation to provide written notice to shareholders who would have been entitled to vote at the meeting had a meeting been called.<sup>[8]</sup> This written notice must be given within 10 business days following the resolution being approved and must contain the text of the resolution and a statement providing a description of and the reasons for the business dealt with by the resolution.<sup>[9]</sup>

Where the Corporation's articles of incorporation or unanimous shareholder agreement require a higher threshold for approval, such higher shareholder approval threshold will prevail over the simple majority approach under the Act's amendment to Section 104(1) of the OBCA.<sup>[10]</sup> This new simple majority approval for written resolutions is only applicable for ordinary resolutions, such as electing/removing directors and appointing/replacing auditors as well as fixing compensation for such auditors. Special resolutions remain subject to two-thirds vote at a shareholder meeting or unanimous approval if in writing.

These changes simplify the OBCA's requirements on shareholder resolutions, providing a more streamlined approach for corporate decision-making without the requirement for meetings on certain actions that are relatively minor in nature. This is especially important given the COVID-19 pandemic where such meetings may not be possible at this time.

## PPSA

### Introduction of Vexatious Registration

The Act introduces the concept of a "vexatious registration" as Part V.1 of the PPSA.<sup>[11]</sup> This intends to assist debtors dealing with abuse and improper use of the PPSA registration system. A vexatious registration is defined by the Act as the registration of a document that has been tendered for the purpose of annoying or harassing a debtor or for any other improper purpose, and tendered by a person who either has no security interest, or who has no security interest registrable under the PPSA.<sup>[12]</sup>

Under these changes, the registrar may reject a document that, if registered, would result in a vexatious registration either on its own volition or in response from any person affected by the registration. In rejecting the document, the registrar is required to give written reasons for the rejection and provide notice of the right to appeal to the Divisional Court within 14 days of receiving written notice.<sup>[13]</sup>

Ontario corporations can take advantage of these changes to the OBCA once the amendments set out in the Act come into effect. For more information on these changes and how they can impact your business, please contact one of the authors of this post or reach out to your regular WeirFoulds LLP contact.

<sup>[1]</sup> Bill 213, *Better for People, Smarter for Business Act, 2020* received Royal Assent on December 8, 2020 (the "Act").

<sup>[2]</sup> *Ibid.*, Schedule 1.

<sup>[3]</sup> *Ibid.*, Schedule 19.

<sup>[4]</sup> Business Corporations Act, RSO 1990, c B 16, s 118(3) ("OBCA").

<sup>[5]</sup> Act, *supra* note 1, Schedule 1, s 5.

<sup>[6]</sup> OBCA, *supra* note 4, s 104(1).

<sup>[7]</sup> Act, *supra* note 1, Schedule 1, s 3(1).

<sup>[8]</sup> *Ibid.*, Schedule 1, s 3(2).

<sup>[9]</sup> *Ibid.*

[\[10\]](#) *Ibid.*

[\[11\]](#) *Ibid.*, Schedule 19, s 1.

[\[12\]](#) *Ibid.*

[\[13\]](#) *Ibid.*

***This information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

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