

CHANGES TO ONTARIO'S BUSINESS CORPORATIONS ACT COME INTO EFFECT JULY 5

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The significant amendments to the *Business Corporations Act* (Ontario) (the "OBCA") introduced by the *Better for People, Smarter for Business Act, 2020* ("Bill 213") were proclaimed into force and took effect on July 5, 2021. Directors and shareholders of Ontario corporations and foreign investors should be aware of such amendments as they reduce barriers for setting up Ontario corporations and for conducting business which requires approval by ordinary resolution.

The OBCA amendments impact Ontario corporations by:

- removing the requirement that at least 25% of a corporation's directors be Canadian residents;
- reducing the approval threshold for a written shareholder resolution in lieu of a meeting for privately-held corporations in certain circumstances; and
- imposing notice requirements for written resolutions that are not signed by all shareholders.

Removal of Director Residency Requirement for Ontario Corporations

The amendments to the OBCA remove the requirement that at least 25% of a corporation's directors be Canadian residents. As a result, Ontario corporations no longer require resident Canadian directors. The removal of this requirement brings Ontario in line with other jurisdictions such as Alberta, British Columbia and Nova Scotia, where there are no director residency requirements. This amendment also eliminates the need for foreign investors and individuals who are not resident in Canada to incorporate in jurisdictions outside of Ontario.

Reduced Approval Threshold for Written Resolutions

Previously, the OBCA required written resolutions of the shareholders of Ontario corporations to be signed by all shareholders entitled to vote at a shareholders' meeting in order to be passed. Clause 104(1)(c) of the OBCA, which was added in the recent amendments, reduces the burden to obtain signatures from all shareholders. Non-offering corporations are now permitted to pass an ordinary resolution of the shareholders by having such resolution signed by the shareholders holding at least a majority of the shares entitled to vote on that resolution. Subject to the requirements for notice described below, a written resolution passed in such a manner will be as valid as if it had been passed by ordinary resolution at a meeting of the shareholders. In circumstances where the articles or a unanimous shareholder agreement require a greater number of votes of shareholders than what is required by the OBCA to pass an ordinary resolution, the greater requirement applies. Proposals that require approval by special resolutions under the OBCA remain



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subject to a two-third vote at a shareholders' meeting or unanimous approval of the resolution in writing.

10-Day Notice Requirement

The amendments to the OBCA also introduce a notice requirement for written resolutions. Within 10 business days after an ordinary resolution is signed by the shareholders holding at least a majority of the shares, Ontario corporations are required to give written notice of the resolution to all the shareholders entitled to vote on the resolution who did not sign it. The notice must include (i) a copy of the text of the resolution and (ii) a statement containing a description of and the reasons for the business dealt with by the resolution. This is an important development as it allows for resolutions to be passed without certain shareholders being aware of the resolutions in advance and reduces the need to call shareholders' meetings when there is not unanimous agreement among shareholders. However, minority shareholders should consider whether certain provisions should be included in the articles, by-laws or shareholder agreements of the corporation requiring specified decisions to be passed by more than a majority.

Please feel free to contact the authors, or your Foglers lawyers, to discuss how the amendments to the OBCA affect your Ontario corporation. We would be pleased to review your corporation's articles, by-laws, shareholder agreements and other constating documents in lights of these changes and to advise on any of your other legal or business needs.