

Legal update

Proposed amendments to Canadian corporate and competition laws

September 2016

Antitrust and competition

Corporate and commercial

Corporate finance and securities

A bill amending the *Canada Business Corporations Act* (CBCA), the *Competition Act* and federal cooperatives and not-for-profit legislation was tabled for first reading in the Canadian parliament on September 28, 2016. The changes proposed (the Amendments) are intended to ensure that Canada continues to have a modern economic framework that allows federally regulated corporations to operate flexibly and innovatively. The Amendments are further intended to increase shareholder democracy and participation while reducing the burden of regulation.

CBCA amendments

Election of Directors

- directors of public CBCA corporations will be required to be elected on an individual and annual basis. Currently the CBCA allows directors to be elected by slate and for up to a three-year term.
- the Amendments introduce majority voting for the election of directors of public corporations where there is only one candidate nominated for each position available on the board. Each nominee must receive a majority of votes to be elected. If a nominee does not receive a majority of votes, he or she may not be appointed a director before the next shareholders' meeting at which directors are elected.
- the Amendments regarding election of directors bring the CBCA substantially in line with the requirements of the Toronto Stock Exchange (TSX). There will be prescribed exemptions for certain corporations from these requirements.

Shareholder Communications

- "notice-and-access" allows the notice of a shareholders' meeting and access to related documentation to be delivered electronically. While securities legislation was amended in 2013 to introduce notice-and-access, the current provisions of the CBCA are not entirely compatible with the full use of notice-and-access by federal corporations. The Amendments, if enacted, will facilitate the use of notice-and-access by federal corporations.
- the Amendments will simplify the time frame for a shareholder to submit proposals to a federal corporation by introducing a prescribed period for submission.

Women on Boards of Directors and in Management

To support the representation of women on the boards of directors and in senior management of federal corporations, it has been announced that the Amendments will require distributing corporations to include disclosure regarding gender diversity among their directors and senior managers. This will bring the CBCA in line with Canadian securities regulations pursuant to which TSX-listed issuers are currently required to make such disclosure on a “comply or explain” basis.

Transparency

The Amendments clarify that all shares and warrants of CBCA corporations must be in registered rather than bearer form to increase transparency.

Competition Act amendments

The definition of “affiliate” in the *Competition Act* is proposed to be amended to reflect a broader range of non-corporate bodies such as trusts, partnerships and other unincorporated entities by referring to entities rather than corporations.

Other legislation

The bill also proposes amendments to the *Canada Cooperatives Act* (CCA) and the *Canada Not-for-profit Corporations Act* (NFP), which statutes are based on the CBCA. The Amendments to the CCA include changes regarding election of directors, transparency and shareholder communication described above. The Amendments to the NFP are largely of a technical nature.

Next steps

Regulations that will provide details of the Amendments and their application are pending. Further in its announcement of the Amendments, the federal government stated that there are important corporate governance issues that were raised in the 2014 public consultation on the CBCA by the government that require further analysis and consultation. Further changes to the CBCA may be coming.

More information to come

For more information on this development, please access the [Government of Canada's Backgrounder](#) and [FAQs](#).

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