

## ONTARIO BUSINESS LAW AMENDMENTS ARRIVING AUGUST 1<sup>ST</sup>

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The Government of Ontario has passed amendments to the *Business Corporations Act* (Ontario) (the OBCA) and the *Partnerships Act* (Ontario), which, among other things, reduce the requirements relating to the residency of directors, impose further restrictions on directors in conflict of interest situations, repeal the financial assistance requirements currently in the OBCA and increases the liability protection of a partner in a limited liability partnership. The amendments, which are scheduled to come into force on August 1, 2007, reflect the Government of Ontario's stated intention to harmonize the OBCA with the federal *Canada Business Corporations Act*. The following chart summarizes the primary changes to the OBCA:

Provisions	Current OBCA	Amended OBCA
<b>Financial Assistance Disclosure</b> <i>Removes s. 20</i>	Corporations must disclose financial assistance given to certain related persons.	Financial assistance disclosure requirements are eliminated.
<b>Distinctions Between Share Classes</b> <i>Adds s. 22(7)</i>	Classes of shares must have different rights and conditions.	Classes of shares can have the same rights and conditions.
<b>Additions to Stated Capital</b> <i>Amends s. 24(3)</i>	Generally, corporations must add the full value of consideration received for shares to the stated capital account, except when property or shares are received from non-arm's length parties.	An additional exception has been created for property received from arm's length parties (shareholder consent required in some cases).
<b>Subsidiary Ownership</b> <i>Adds ss. 29(9)-(11)</i>	A subsidiary may not own shares of its parent.	Subsidiaries can own shares of parents in some limited cases (relevant to acquisitions of foreign targets).
<b>Stated Capital and Stock Dividends</b> <i>Amends s. 38(2)</i>	Unclear whether high-low stock dividends permitted	High-low stock dividends clearly permitted
<b>Shareholder Proposals – Beneficial Owners</b> <i>Amends s. 99(1)</i>	Only registered shareholders may bring shareholder proposals.	Both beneficial owners and registered shareholders are permitted to bring shareholder proposals.
<b>Shareholder Proposals – Length</b> <i>Replaces s. 99(3), adds s. 99(3.1)</i>	The length of supporting statements is unrestricted.	Supporting statements are limited to 500 words.
<b>Shareholder Proposals – Refusal</b> <i>Replaces s. 99(5)(b), adds s. 99(5)(b.1)</i>	A corporation may refuse to consider proposals which have a primarily personal purpose or which do not relate in any significant way to the business of the corporation.	A corporation may refuse a proposal if it clearly appears that the proposal does not relate in any significant way to the corporation's business.

CONTINUED

## HIGHLIGHTS

- Reduced residency requirements for boards of directors
- New conflict of interest restrictions for directors
- Financial assistance requirements repealed
- Increased liability protection for partners in LLPs

<b>Provisions</b>	<b>Current OBCA</b>	<b>Amended OBCA</b>
<b>Voting Regime</b> <i>Replaces s. 100(2)</i>	A shareholder acquiring ownership of shares after the record date may be entitled to vote at a shareholder meeting in some cases.	The list created on the record date is final and no new shareholders are entitled to vote at the meeting.
<b>Proxy Solicitation Rules</b> <i>Adds s. 112 (1.1 &amp; 1.2)</i>	Proxy solicitation rules restrict persons from soliciting proxies in respect of an offering corporation.	Exemptions from proxy solicitation rules apply in respect of solicitations targeted to 15 or fewer shareholders and solicitations by public broadcast or publication.
<b>Residency Requirements</b> <i>Replaces s. 118(3), removes 126(6)</i>	A majority of board members, and a majority of directors participating in a board meeting, must be Canadian residents.	25% of board members must be Canadian residents. There is no longer a residency requirement for board meetings.
<b>Conflicts of Interest – Attending and Voting</b> <i>Amends s. 132(5), adds ss. 132(5.1) &amp; (5.2)</i>	Directors cannot vote on a resolution to approve a transaction in which they have a conflict of interest but can attend meetings during which the transaction is discussed.	Directors are now prohibited from attending any part of a meeting during which the contract or transaction is discussed.
<b>Conflicts of Interest – Notice</b> <i>Amends s. 132(6)</i>	No requirement to update a notice of interest	A notice of interest must be updated to reflect material changes.
<b>Duty of Care</b> <i>Amends s. 134(1)</i>	Beneficiary of the duty of care not specified (similar provision in CBCA interpreted by Supreme Court to be open-ended, and including creditors)	Duty of care specifically owed to the corporation
<b>Diligence Defence</b> <i>Replaces s. 135(4)</i>	Due diligence defence is available in respect of good faith reliance upon annual financial statements and reports of professionals.	Due diligence defence is available in respect of good faith reliance upon either interim or annual financial statements, reports of professionals, and reports or advice of an officer or employee of the corporation where it is reasonable in the circumstances to rely on the report or advice.
<b>Indemnification – Other Entities</b> <i>Amends s. 136(1), replaces s. 136(3), adds s. 136(4)</i>	Corporation may indemnify a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor	Corporation may indemnify an individual who acts or acted at the corporation's request as a director or officer of a body corporate, or in a similar capacity of another entity
<b>Indemnification – Coverage</b> <i>Amend ss. 136(1) &amp; 136(4), adds s. 136 (4.1)</i>	Corporation may indemnify in respect of criminal, civil, and administrative proceedings to which the indemnitee is made a party by reason of being or having been a director or officer of the corporation	Corporation may indemnify in respect of civil, criminal, administrative, investigative or other proceedings in which the indemnitee is involved because of the association with the corporation and indemnification may also extend to derivative actions
<b>Indemnification – Advances</b> <i>Replaces s. 136(2)</i>	No advance of defence costs permitted	Defence costs may be advanced but must be repaid if the indemnitee is found not to have acted honestly and in good faith.
<b>Right of Indemnification – Early Settlement</b> <i>Adds s. 136(4.2)</i>	Entitlement to an indemnity arises after the indemnitee successfully defends the action or proceeding.	Encourages early settlement: individuals are entitled to the indemnity if they are not judged to have committed any fault, subject to several conditions.
<b>Scope of Insurance</b> <i>Replaces s. 136(4)</i>	Corporation may not purchase insurance where the liability relates to the person's failure to act honestly and in good faith with a view to the best interests of the corporation.	No equivalent restriction
<b>Circulation of Financial Statements</b> <i>Replaces s. 153(3), adds s. 153(4)</i>	An offering corporation must circulate financial information to all shareholders except those who waive the right to this information.	An offering corporation is only required to circulate financial information to those who request it.
<b>Derivative Actions</b> <i>Adds s. 246(2.1)</i>	A complainant must notify the corporation's directors of the complainant's intention to seek leave to bring a derivative action.	No notice is required in respect of a complainant's intention to seek leave to bring a derivative action if all directors of the corporation are defendants in the action.

Another significant amendment scheduled to come into force on August 1, 2007 is a change to the limited liability partnership liability shield. Under the current *Partnerships Act* (Ontario), limited liability partnerships are protected from the negligent acts of other partners or employees who are not directly under their supervision. The amendments to sections 10(2) and 10(3) of the Act provide protection to partners from any debts or obligations incurred by the limited liability partnership.

Other recent changes to the OBCA came into effect on January 1, 2007 as a result of the *Securities Transfer Act, 2006* (Ontario). For a summary of these changes, please consult our December 2006 Blakes Bulletin on Financial Services article by Ian Binnie: *The Securities Transfer Act: Arriving January 1st*.

By-laws of Ontario corporations should be reviewed to determine if amendments are necessary or advisable. If a by-law provision is not inconsistent with the OBCA as amended, the by-law provision will continue to apply, even if it is more onerous than the OBCA requirements (for example, by-laws providing for a majority of resident Canadian directors). However, if a by-law provision is contrary to the OBCA, it will not be enforceable (for example, by-laws relating to shareholder entitlement to vote).

This document is a brief summary for informational purposes only and should not be relied upon as legal advice. The text of the OBCA should always be consulted when determining a person's obligations and rights thereunder. If you have any questions regarding any of the recent changes described above, please contact one of the following lawyers:

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