

MCMILLAN BINCH LLP

Possible Amendments to OBCA to Consider

by Wayne Gray

POSSIBLE AMENDMENTS TO OBCA TO CONSIDER

- Remove board and committee Canadian residency requirement
- Introduce Ontario unlimited corporations
- Make electronic shareholder communications organic
- Harmonize Part VI (Investment Securities) with USTA (including repeal of ss. 68-91)
- Provide corporations the option to dematerialize their securities (i.e. dispense with security certificates)
- Adopt enhanced unanimous shareholder agreement (USA) regime (as primary means for the private ordering of small and medium-sized business)
- Provide table of standard and USA provisions that shareholders of non-offering corporations may elect to adopt (to minimize the cost and inconvenience of forming a USA)
- Allow non-offering corporations to dispense with appointment of board through USA
- Consider adopting CBCA squeeze-out transaction regime (for non-offering corporations)
- For professional corporations, reduce requirement for ownership from 100% to 51% (to allow income-splitting among family members)
- Repeal what is left of s. 20 on financial assistance
- Allow greater flexibility in share provisions for non-offering corporations
- Allow lower-tier corporations to own shares in upper-tier corporations (provided solvency tests are met and shares cannot vote)
- Adopt improved CBCA rules on shareholder proposals (as primary mechanism for shareholder voice in the affairs of an offering corporation)
- Conform OBCA shareholder voting entitlements to NI 54-101

- Adopt CBCA regime on proxy solicitation including exemptions for targeted solicitations to less than 16 shareholders and solicitations by public broadcast
- Allow for virtual shareholder meetings
- Allow first directors to resign without finding a replacement
- Repeal provision imposing liability on directors for unpaid employee wages (since Ontario employees are more comprehensively covered under *Employment Standards Act, 2000*)
- Adopt CBCA's improved conflict of interest rules for directors and officers (D&O)
- Adopt CBCA's improved good faith reliance liability provisions (expert reports and audited financial statements)
- Adopt CBCA's improved D&O indemnification and insurance provisions
- Require audit committee of offering corporation to be composed of three directors, each of whom is independent
- Remove requirement that share provisions be filed with OBCA Director
- Adopt improved CBCA revival regime
- Refocus oppression remedy on shareholders, not creditors
- Adopt new CBCA regime on correction of certificates and other documents
- Adopt new CBCA regime on cancellation of articles