

Current Trends in Corporate Practice and Procedures

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Corporate Procedure Fundamentals

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INTRODUCTION

This paper is intended to provide an overview of certain recent trends and changes in Canadian corporate law. In particular, this paper will examine certain of the proposed changes expected as a result of Bill C-25 (An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act) which was introduced in September 2016, but has yet to be enacted, as well as a recent trend in Canadian corporate law with respect to the introduction of exclusive forum by-laws, which if widely adopted, may have broad consequences for how shareholder-company disputes are heard in Canada.

BILL C-25

Bill C-25 has recently passed second reading in the House of Commons and was subsequently referred to the Standing Committee on Industry, Science and Technology. If enacted, the bill would amend the legislation related to entities that are federally formed, including under the Canada Business Corporations Act (the CBCA). According to Hon. Navdeep Bains (Minister of Innovation, Science and Economic Development, Lib.) who has sponsored the bill, the purposes of the bill is to

"Set out measures to modify the way corporate directors are elected. The bill also contains measures to improve diversity on corporate boards and in senior management level positions. The goal is to attract the best and brightest from as wide a talent pool as possible".¹

Bill C-25 uses the terms "distributing companies" and "prescribed corporations". While "distributing companies" is a defined term in the CBCA, which is in essence "public companies", the term "prescribed companies" is not defined as of yet. As such, there remains some ambiguity as to the scope of the proposed amendments, however it is widely expected that "prescribed companies" will also be public entities, and as such, the amendments are not expected to affect private companies.

DIRECTOR VOTING

Currently shareholders can either vote FOR or WITHHOLD from voting on directors nominees at annual meetings of shareholders. This means, that (except in contested elections) a director who receives even one vote is validly elected as a director. Furthermore, companies may present all director nominees as a slate (i.e. as a group), instead of conducting a vote on an individual by

¹House of Commons Debates, 42nd Parl, 1st Sess, No 98 (26 October 2016) at 1525 (Hon Geoff Regan).