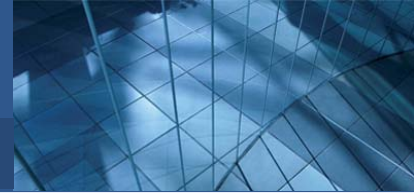




# Canada Business Corporations Act - Proxy Voting and Related Provisions

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OCTOBER 25, 2011



## Canada Business Corporations Act

- CBCA is the most significant business corporations statute in Canada
- Governs more public corporations than any other statute (approximately 39% of S&P/TSX Composite Index; 56% of S&P/TSX 60 Index, excluding financial institutions)
- Provides model for federal financial institutions legislation
- Several provincial statutes typically follow its lead
- Industry Canada has historically undertaken reforms following public consultations



## Evolution

- CBCA enacted in 1975 / reenacted in 1985
- 1995 Industry Canada discussion paper on shareholder communications and proxy solicitation rules
  - Considered requirement for intermediaries to provide issuers with beneficial owner lists
  - Considered harmonization with National Policy 41 by amending “registrant” definition
  - Amendment of record date and notice provisions, including provision for a fixed record date for voting purposes
  - Specification of voting rights entitlement for loaned shares



## Evolution (cont'd)

- Harmonization of mandatory solicitation provisions with provincial securities laws
- Amendment of dissident proxy solicitation rules to reflect changes made in 1992 to the US rules by the SEC



## Evolution (cont'd)

- 2000 Parliamentary Research Branch Note on Shareholder Communications focused on two issues from the 1995 Paper
  - Potential amendment to require intermediaries to provide issuers with lists of beneficial owners
  - Amendments to proxy solicitation rules to facilitate shareholder communication



## Evolution (cont'd)

- 2001 Amendments: Bill S-11 following consultations instituted in 1994
  - Expand rights of shareholders to participate in corporate decision making
  - Allow beneficial owners to submit proposals and move eligibility requirements to the regulations
  - Allow increased communication between shareholders
  - Expand means for shareholders to solicit proxies
  - Allow electronic communications between a corporation and its shareholders (consent required)



## Evolution (cont'd)

- Add a provision permitting setting of a record date for voting entitlement at a meeting
- Provision added for electronic shareholders meeting and participation in meeting by electronic means
- the earlier Bill S-19 in 2000 (which died on the order paper) had also provided that a borrower should be entitled to vote a loaned share unless otherwise specified



## Evolution (cont'd)

- 2004 Industry Canada Discussion Paper
  - Towards an improved standard of corporate governance for federally incorporated companies
- 2007 Industry Canada and Finance Discussion Paper
  - Focused on securities transfer legislation
- Consultations not result in issuance of any additional proposals for changes
- View that subject matters perhaps best dealt with under provincial legislation



## Evolution (cont'd)

- 2010 Statutory Review of CBCA-Report of Standing Committee on Industry, Science and Technology
  - Section 136 of Bill S-11 mandated review of CBCA within 5 years (thereafter every 10 years); due to occur in 2006 but delayed until 2009
  - Industry Canada witnesses testified CBCA well functioning, responsive, flexible, with little substantive or significant demand for amendments
  - Shareholder concerns raised included shareholder rights and election of directors
  - CCGG and SHARE among those who made submissions



## Evolution (cont'd)

- House committee recommended broad public consultation within two years on an assortment of issues including:
  - s. 41-voting on all substantive (non-procedural) resolutions to be conducted by ballot
  - s. 106-amendment to require individual elections of directors; prohibition of slate voting
  - s. 106-amendment to eliminate availability of director terms of greater than one year
  - s. 106-amendment to require majority voting in election of directors
  - s.132(5)-exclusion of public corporations from application of electronic meeting provisions



## Evolution (cont'd)

- s. 137(5)(2)-change in reference date for fixing filing deadline for shareholder proposals to anniversary date of last annual meeting
- s. 137-provision of shareholder proponents with reasonable period of time to speak
- Amendment to provide significant shareholders access to the proxy circular
- Equal treatment of shareholders in the proxy process irrespective of whether they wish to protect their privacy
- Whether CBCA should be amended to facilitate notice and access (a CCGG submission)



## Current Status

- A number of potential issues requiring further consideration in addition to those identified in the 2010 statutory review
- Including among others:
  - The general question of the status of beneficial owners compared to registered holders
  - Differentiation of rights
    - Entitlement with respect to proposals but not other shareholders' rights (e.g. requisitions, dissent rights, election reviews, oppression remedy, etc.)



## Current status (cont'd)

- S.50-shareholder register/ s.51-corporation may treat registered holder as person exclusively entitled to vote, receive notice and exercise other rights
- Corporation is not required to inquire into performance or observance of third party duties/rights
- Issuer control over meetings and outcomes (e.g. chair's declaration as to voting outcomes, proxy deposit deadline, etc.)
- Limitations on electronic communications (e.g. notice and access)
- CSCS white paper proposal of issuer recognition of beneficial owners



## For further information

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