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Bill 101

**An Act to amend the Business Corporations Act
with respect to meetings of shareholders, the election of directors
and the adoption of an executive compensation policy**

Mr. H. Takhar

Private Member's Bill

1st Reading March 7, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill makes various amendments to the *Business Corporations Act* with respect to meetings of shareholders, the process for electing directors and the use of proxies.

The new Part IX.1 requires certain corporations to place before the shareholders, at every annual meeting, information respecting diversity among directors and the members of senior management.

Finally, the Act is amended to provide shareholders with the opportunity to propose an executive compensation policy at a meeting of shareholders. The directors of the corporation are required to comply with the policy if it is adopted.

**An Act to amend the Business Corporations Act with respect to meetings of shareholders,
the election of directors and the adoption of an executive compensation policy**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 Subsection 99 (4) of the *Business Corporations Act* is repealed and the following substituted:

Proposal may include nominations

(4) A proposal may nominate a single individual for election as a director if the proposal is signed by one or more registered holders of shares or beneficial owners of shares that represent in the aggregate,

- (a) at least 3 per cent of the shares of the corporation; or
- (b) at least 3 per cent of the shares of a class or series of shares of the corporation that are entitled to vote at the meeting to which the proposal is to be presented.

Nominations at meeting not prevented

(4.1) For greater certainty, subsection (4) does not prevent nominations being made at a meeting of shareholders.

Chair at meeting

(4.2) Despite clause 97 (c), if a proposal described in subsection (4) of this section has been submitted, the shareholders present at a meeting of shareholders shall choose a person from their number to preside as chair.

2 Subsection 105 (1) of the Act is repealed and the following substituted:

Requisition for shareholders meeting

(1) One or more registered holders of shares or beneficial owners of shares that represent in the aggregate at least 3 per cent of the issued shares of the corporation may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

3 Section 110 of the Act is amended by adding the following subsections:

Same

(3.1) Every form of proxy shall provide a means for the shareholder to specify that the shares registered in the shareholder's name shall be voted for or against the election of any director who is to be elected at a meeting of shareholders.

Same

(3.2) Every form of proxy shall include the names of all director nominees included in a proposal made under subsection 99 (4).

4 Subsection 112 (1) of the Act is repealed and the following substituted:

Information circular

(1) No person shall solicit proxies unless an information circular, in the prescribed form, is sent to each shareholder whose proxy is solicited, to each director and, in the case set out in clause (b), to the corporation as follows:

- (a) in the case of solicitation by or on behalf of the management of a corporation, a management information circular, either as an appendix to or as a separate document accompanying the notice of the meeting; or
- (b) in the case of any other solicitation, a dissident's information circular stating the purposes of the solicitation shall be included with the management information circular described in clause (a) unless the dissident chooses to send it as a separate document.

5 (1) Subsection 119 (4) of the Act is amended by striking out “and at each succeeding annual meeting at which an election of directors is required”.

(2) Section 119 of the Act is amended by adding the following subsections:**Same, annual meetings**

(4.1) Subject to clause 120 (a), shareholders of a corporation shall elect, by ordinary resolution at each succeeding annual meeting at which an election of directors is required, directors to hold office for a term expiring not later than the close of the next annual meeting of shareholders following the election.

Votes to elect director

(4.2) Despite subsections (4) and (4.1), a person may be elected as a director only if a majority of the votes cast are in favour of his or her election, even if the articles or by-laws of the corporation provide otherwise.

Same, separate vote for each candidate

(4.3) A separate vote of shareholders shall be taken with respect to each candidate nominated for director.

Same, mandatory voting

(4.4) Every shareholder who is entitled to vote in an election of directors and who is present in person at a meeting of shareholders of a corporation at which an election of directors occurs must cast a vote in favour of or against every candidate, even if the articles or by-laws of the corporation provide otherwise.

Majority voting

(4.5) If, at a meeting of shareholders of a corporation at which an election of directors is required, there is only one candidate nominated for each position available on the board, each candidate is elected only if the number of votes cast in the candidate's favour represents a majority of the votes cast for and against the candidate by the shareholders who are present in person or represented by proxy, unless the articles require a greater number of votes.

Beneficial owners

(4.6) A person who claims to be a beneficial owner of shares of a corporation is entitled to vote in an election of directors if the person provides proof that the person is a beneficial owner of shares of the corporation.

(3) Subsection 119 (8) of the Act is repealed and the following substituted:**Vacancy**

(8) If, for either of the following reasons, a meeting of shareholders fails to elect the number or the minimum number of directors required by the articles, the directors elected at the meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum:

1. A lack of consent, disqualification under subsection 118 (1) or the death of any candidates.
2. A lack of majority referred to in subsection (4.5) of this section.

Appointment of directors

(8.1) The directors may, unless the articles otherwise provide, appoint one or more additional directors, who shall hold office for a term ending not later than the close of the next annual meeting of shareholders, but the total number of directors so appointed shall not exceed one-third of the number of directors elected at the previous annual meeting of shareholders.

Exception

(8.2) If a candidate was not elected during an election held in accordance with subsection (4.3), the candidate is not to be appointed, except in prescribed circumstances, as a director under subsection (8.1) or 124 (1), before the next meeting of shareholders at which an election of directors is required.

6 Section 137 of the Act is amended by adding the following subsection:**Executive compensation policy**

(2) The directors of a corporation shall fix the remuneration of the directors and officers of the corporation in accordance with any adopted executive compensation policy referred to in section 169.1.

7 The Act is amended by adding the following Part after section 137:

PART IX.1
DISCLOSURE RELATING TO DIVERSITY

Diversity in corporations

137.1 (1) The directors of a prescribed corporation shall place before the shareholders, at every annual meeting, the prescribed information respecting diversity among the directors and among the members of senior management as defined in the regulations.

Information to shareholders and Director

(2) The corporation shall send the information referred to in subsection (1) to each shareholder, except to a shareholder who has informed the corporation in writing that the shareholder does not want to receive that information. The corporation shall concurrently send the information to the Director.

8 The Act is amended by adding the following section:

Proposal to adopt, amend or repeal executive compensation policy

169.1 A registered holder of shares entitled to vote, or a beneficial owner of shares that are entitled to be voted, at an annual meeting of shareholders may, in accordance with section 99, make a proposal to adopt an executive compensation policy with respect to the remuneration of directors or officers of the corporation or may make a proposal to amend or repeal such a policy.

Commencement

9 This Act comes into force on the day it receives Royal Assent.

Short title

10 The short title of this Act is the *Enhancing Shareholder Rights Act, 2017*.