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**CONSULTATION DRAFT**

**ONTARIO REGULATION**

to be made under the

**NOT-FOR-PROFIT CORPORATIONS ACT, 2010**

**GENERAL**

**Restrictions on purposes**

1. The purposes of a corporation shall not include any purposes that are unlawful.

Proposed section 1 restricts the purposes of a corporation to exclude any unlawful purposes.

**Authorization of representative**

2. For the purposes of subsection 48 (7) of the Act, a corporation shall recognize an individual to represent a member corporation or other entity only if the individual has been authorized by a resolution of the directors or governing body of the member corporation or entity.

Proposed section 2 sets out that a corporation has to recognize an individual authorized by a resolution of the directors or governing body of the member corporation or entity to represent the member at meetings and exercise all the powers of that corporation or entity on its behalf as permitted under subsection 48(7) of the Act.

**Maximum number of words for proposal and supporting statement**

3. For the purposes of subsection 56 (3) of the Act, the prescribed maximum number of words is 500.

Proposed section 3 sets 500 words as the maximum number of words for both the proposal and the supporting statement to be included in a notice of meeting of members.

### **Form of proxy**

**4.** (1) In this section,

“form of proxy” means a form in writing that becomes a proxy when completed and signed by or on behalf of a member.

(2) This section applies to a form of proxy referred to in subsection 64 (3) of the Act.

(3) A form of proxy shall,

- (a) indicate, in bold type, the meeting at which the proxy is to be used;
- (b) indicate, in bold type, that a member may appoint a proxyholder, other than a person designated in the form of proxy, to attend and act on the member’s behalf at the meeting, and contain instructions as to the manner in which the member may do so;
- (c) contain a designated blank space for a signature and the date of signature;
- (d) provide a means for the member to designate a different person as proxyholder, if the form of proxy designates a person as proxyholder;
- (e) provide a means for the member to specify that the membership registered in their name is to be voted for or against each matter, or group of related matters, identified in the notice of meeting, other than the appointment and remuneration of an auditor or person to conduct a review engagement of the corporation, and the election of directors;
- (f) provide a means for the member to specify that the membership registered in their name is to be voted or withheld from voting in respect of the appointment and remuneration of an auditor or person to conduct a review engagement of the corporation, or the election of directors; and
- (g) state that the membership represented by the proxy is to be voted or withheld from voting, in accordance with the instructions of the member, on any ballot that may be called for and that, if the member specifies a choice under clause (e) or (f) with respect to any matter to be acted upon, the membership is to be voted accordingly.

(4) A form of proxy may include a statement that the member confers authority with respect to matters for which a choice is not provided in accordance with clause (3) (e) only if the form of proxy states, in bold type, how the proxyholder is to vote the membership in respect of each matter or group of related matters.

(5) A form of proxy that confers discretionary authority in respect of amendments to matters identified in the notice of meeting or other matters that may properly come before the meeting shall contain a statement to that effect.

(6) If a form of proxy is not dated, the proxy is deemed to have been dated on the date it is sent.

(7) If a form of proxy is sent in electronic form, the requirement in clauses (3) (a) and (b) and subsection (4) that certain information be set out in bold type is satisfied if the information is set out in a different manner so as to draw the addressee's attention to the information.

(8) A corporation shall make the form of proxy available in both electronic and paper format, unless all members consent in writing to the form being available only in electronic format.

Proposed section 4 generally sets out the requirements related to the "form of proxy" under subsection 64(3) of the Act, which is the written form that becomes a proxy when completed and signed by or on behalf of a member. For example, the "form of proxy" must indicate the meeting at which the proxy will be used and contain a designated blank space for a signature and the date of signature. Other matters related to a form of proxy are also proposed such as if a form of proxy is not dated, the proxy is deemed to have been dated on the date it is sent.

### **Report on financial statements**

**5.** A report on financial statements referred to in section 78 of the Act shall be prepared in accordance with the generally accepted auditing standards set out in the *CPA Canada Handbook – Assurance*, as amended from time to time.

Proposed section 5 requires the report on financial statements to be prepared in accordance with the generally accepted auditing standards set out in the *CPA Canada Handbook – Assurance*, as amended from time to time.

### **Financial statements**

**6.** (1) The financial statements referred to in Part VIII of the Act shall,

- (a) be prepared in accordance with the generally accepted accounting principles set out in the *CPA Canada Handbook – Accounting* or the *CPA Canada Public Sector Accounting Handbook*, both as amended from time to time; and
- (b) include,
  - (i) a statement of financial position or a balance sheet;
  - (ii) a statement of comprehensive income or a statement of retained earnings;
  - (iii) a statement of changes in equity or an income statement; and
  - (iv) a statement of cash flows or a statement of changes in financial position.

(2) Financial statements need not be designated by the names set out in clause (b).

Proposed section 6 outlines the statements that must be included in the financial statements referred to in Part VIII of the Act (e.g., a statement of financial position or a balance sheet, etc.) and requires these financial statements be prepared in accordance with the generally accepted accounting principles set out in the *CPA Canada Handbook – Accounting* or the *CPA Canada Public Sector Accounting Handbook*, as amended from time to time.

### **Corporate registers**

**7.** (1) The following information must be contained in the register of directors referred to in clause 92 (1) (f) of the Act:

1. The name of every current director and the date on which the person became a director.
2. The name of every former director who ceased to be a director within the preceding six years, and the dates on which the person became a director and ceased to be a director.
3. The residential address or address for service of every current director, including the municipality, street and number, if any, and postal code.
4. An email address for every current director who has consented to accepting information or documents by electronic means.

(2) The following information must be contained in the register of officers referred to in clause 92 (1) (g) of the Act:

1. The name of every current officer and the date on which the person became an officer.
2. The name of every former officer who ceased to be an officer within the preceding six years, and the dates on which the person became an officer and ceased to be an officer.
3. The residential address or address for service of every current officer, including the municipality, street and number, if any, and postal code.
4. An email address for every current officer who has consented to accepting information or documents by electronic means.

(3) The following information must be contained in the register of members referred to in clause 92 (1) (h) of the Act:

1. The name of every current member and the date on which the person became a member.
2. The name of every former member who ceased to be a member within the preceding six years, and the dates on which the person became a member and ceased to be a member.
3. The residential address, business address or address for service of every current member, including the municipality, street and number, if any, and postal code.
4. An email address for every current member who has consented to accepting information or documents by electronic means.
5. The class or group of membership of each member, if there is more than one class or group.

Proposed section 7 outlines certain information (e.g., names, residential or other addresses, email addresses, etc.) that must be kept in the register of directors under clause 92(1)(f), the register of officers under clause 92(1)(g), and the register of members under clause 92(1)(h) of the Act.

### **Information in writing**

**8.** (1) The following shall be in writing:

1. A resignation of a director, referred to in subsection 25 (2) of the Act.

2. A statement of a director giving reasons for resigning or opposing his or her removal, referred to in subsection 27 (1) of the Act.
3. A disclosure by a director or officer of a conflict of interest, referred to in subsections 41 (1) and (4) of the Act.
4. A dissent of a director who was present at a meeting at which a resolution was passed or action taken, referred to in clause 45 (1) (c) of the Act.
5. A notice of a corporation to a member of its intention to omit a proposal submitted by the member and reasons for the refusal, referred to in subsection 56 (8) of the Act.
6. A revocation of a proxy by a member, referred to in subsection 64 (6) of the Act.
7. A resignation of an auditor or person appointed to conduct a review engagement, referred to in subsection 70 (2) of the Act.
8. A notice of a director or member to an auditor or former auditor, referred to in subsection 75 (2) of the Act.
9. A statement of an auditor or a corporation respecting an auditor's resignation, removal or replacement, referred to in subsections 75 (4), (5) and (7) of the Act.
10. A statement of a proposed replacement auditor respecting the corporation's reasons for replacement, referred to in subsection 75 (5) of the Act.
11. A notice to a creditor respecting an amalgamation, referred to in clause 112 (3) (a) of the Act.
12. A consent of a member to the dissolution of a corporation, referred to in clause 166 (b) of the Act.
13. A consent of a creditor or other person having interests in a corporation's debts, obligations or liabilities to the dissolution of the corporation, referred to in clause 167 (1) (c) of the Act.
14. A consent of a corporation to publication relating to proceedings, referred to in subsection 174 (5) of the Act.

15. The following information relating to a dissent of a member of a corporation to a resolution described in subsection 187 (1) of the Act:
- i. An objection of a dissenting member to the resolution, referred to in subsection 187 (3) of the Act.
  - ii. A notice of a corporation that the resolution has been adopted, referred to in subsection 187 (5) of the Act.
  - iii. A notice of a dissenting member containing a demand for payment of the fair value of his or her membership interest, referred to in subsection 187 (7) of the Act.
  - iv. An offer by the corporation to pay for a dissenting member's membership interest, referred to in clause 187 (11) (a) of the Act.
  - v. A notice of a dissenting member, referred to in subsection 187 (25) of the Act, when a corporation shall not make a payment to a dissenting member for the reasons described in subsection 187 (26) of the Act.
16. The permission of a member, referred to in subsection 193 (3) of the Act.
17. A waiver or consent given by a person described in section 198 of the Act in respect of a notice or other document required by the Act or the regulations to be given by a corporation or the Director.

### **Same**

(2) Subsection (1) does not affect whether or not any other document or information referred to in the Act or the regulations shall be in writing.

Proposed section 8 requires certain information to be in writing, such as a director's or auditor's resignation, a member's consent to the dissolution of a corporation, and a notice to a creditor respecting an amalgamation.

### **Dissent of director**

**9.** A dissent of a director referred to in clause 45 (1) (d) or 45 (3) (b) of the Act shall be sent by registered mail or delivered to the registered office of the corporation.

Proposed section 9 provides that a director's dissent referred to in clause 45(1)(d) or 45(3)(b) of the Act must be sent by registered mail or delivered to the corporation's registered office.

### **Notice of appointment to auditor, person conducting review engagement**

**10.** A corporation shall give notice in writing of the appointment of an auditor or a person to conduct a review engagement under subsection 68 (1), section 72 or subsection 73 (1) of the Act, as applicable, to the auditor or the person immediately after the appointment is made.

Proposed section 10 provides that immediately after the appointment of an auditor or a person to conduct a review engagement under subsection 68(1), section 72 or subsection 73(1) of the Act, the corporation must give the auditor or the person notice in writing of their appointment.

### **Notice, etc., to member or director**

**11.** (1) A notice or other document required or permitted by the Act, the regulations, the articles or the by-laws to be given by a person other than the Director to a member or director of a corporation in accordance with subsection 196 (1) of the Act may be sent by prepaid mail or delivered personally to the member or director.

(2) A notice or other document described in subsection (1) sent by prepaid mail is deemed to have been received by the intended recipient on the fifth day after it was sent.

Proposed section 11 provides that a notice or other document required or permitted by the Act, the regulations, or a corporation's articles or by-laws to be given by a person other than the statutory Director to a member or director of a corporation under subsection 196(1) of the Act may be sent by prepaid mail or delivered personally to the member or director, and is deemed to have been received by the intended recipient on the fifth day after it was sent.

### **Notice, etc., to corporation**

**12.** (1) Except where otherwise provided in the Act, a notice or other document required or permitted by the Act or the regulations to be given by a person other than the Director to a corporation at its registered office in accordance with section subsection 197 (1) of the Act may be sent by prepaid mail or delivered personally to that office.

(2) A notice or other document described in subsection (1) sent by prepaid mail to a corporation at its registered office is deemed to have been received by the corporation on the fifth day after it was sent.

Proposed section 12 provides that unless stated otherwise in the Act, a notice or other document required or permitted by the Act or the regulations to be given by a person other than the statutory Director to a corporation's registered office under subsection 197(1) of the Act may be sent by prepaid mail or delivered personally to that office, and is deemed to have been received by the corporation on the fifth day after it was sent.

### **Giving notice by electronic means**

**13.** (1) A notice required or permitted by the Act or the regulations to be given by a corporation to a person other than the Director may be given by electronic means if the corporation's by-laws provide for giving notice in that manner and the person consents to receiving the notice in that manner.

(2) Despite subsection (1), a corporation shall provide the notice by non-electronic means upon request.

Proposed section 13 provides that notices required or permitted to be given under the Act or its regulation by a corporation to a person other than the statutory Director may be given electronically if the corporation's by-laws allow for it and if the person consents to receiving the notice electronically. However, a corporation must provide such notice by non-electronic means upon request.

### **Financial disclosure, number of days**

**14.** For the purposes of subsection 84 (2) of the Act, the prescribed number of days is five business days.

Proposed section 14 sets out that a corporation must give a copy of certain financial information to a member, upon their request, not less than five business days prior to an annual meeting of members or before the signing of a resolution under section 59 instead of the annual meeting.