

Index

Amalgamation, 66-67

Arm's-length governance model, 2, 123, 140

Articles of incorporation

amendment, 67-68
CBCA and, 13-14
changes to and shareholder dissent, 58
corporate records, 58
issuance of series of shares, and, 57
private company, and, 9
“squeeze-out”, 72-73

Assets, transfer of all, 73-74

Auction rights, 102-103

Audit committee, 22, 55, 127, 140

Auditors

appointment, 22, 31, 68, 120
attendance at meeting, right of shareholders to require, 62
compliance with CBCA, 121
removal, 68, 122
role at shareholder meeting, 110
valuator of transferred shares, as, 101

Bank financing and guarantees, 93-94

Board and management relationship

authority, line of, 50-51
budgets, importance to governance, 51-53
CEO, evaluating, 51
communication between, 49-50
generally, 47
management duties, 47-48
roles, 49
signing authorities, 48-49

Board committees

audit committee, 22-23
compensation committee, 23
delegation of power to, 22
executive committee, 22
human resources committee, 23
nominating committee, 23
special temporary committees, 23

Board meetings

attendance, 34, 132
conduct of, 35-36, 141
dissenting votes, recording, 134-135
minutes, 37, 135
notice, 33-34
preparation for, 132-137
quorum, 35

Board of Directors, *see also* Directors

budgets, responsibility for, 52-53
Canadian resident requirement, 20
ceasing to hold office, 21
clearly defined roles and responsibilities, need for, 126
committees, delegation of power to, 22-23
compensation, 126
composition, 20-22
decision, review of, 141
dissenting votes, recording, 134-135
diversity, 129-130
generally, 19-20
integrity and ethical dealing, 126-127
meetings, *see* **Board meetings**
number of directors, 20
policies, 23-24
quorum, 35, 134
regular evaluation, 124-125
rubber stamp, as, 143
term, 20
who may serve, 20

Budgets

budgets, Board's responsibility for, 52-53
importance to company governance, 51-53

Business judgment rule, 28, 142

By-laws

CBCA and, 14-16
passing of, 32
shareholders' rights, and, 68-70

Canada Business Corporations Act (CBCA), *see also* Shareholder statutory rights

amalgamation, 66-67
articles of incorporation, and, 13-14

compliance with, duty of directors, 30
governing statute, as, 11-12

order for compliance, 121
private company, lack of definition, 9

CEO

budget management, and, 52-53
duty of directors to oversee, 136
evaluating, 51
leadership of management, 49
line of authority, and, 50-51, 135-136
line of communication from board to management, 49-50, 135-136
oversight by directors, 136-137

Company charter

compliance with, 30
generally, 1, 9, 16, 23, 68

Conflict of interest

by-laws, 69
director's attendance at meetings, and, 34, 36, 130
director's disclosure of, 26-27, 37, 131, 134
negative covenants, and, 103
written code of business conduct, 126-127

Continuance of corporation in another jurisdiction, 67, 70

Conversion price, 76-77

Conversion rights, 75-76

Corporate governance, generally

arm's-length governance model, 123
defined, 1-3
entrepreneurial governance model, 123
good governance
 benefits of, 5-6,
 implementation, 7
 resistance to, 6-7
principles, 3-4
quasi-public company, 123
recommended practices
 board diversity, 129-130
 compensation, 126
 defined roles and responsibilities, 126
 experienced directors, regular evaluation, 124-125
 family-owned companies, 128-129
 generally, 123-124, 131-137
 implementation, 127-128
 integrity and ethical dealing, emphasis on, 126-127
 risk management, 127

Corporate records

right to copies of, 58
right to examine, 58, 134

right to examine shareholder list, 58

Co-sale rights, 98

Covenants

family law, 105-106
generally, 106-107
negative
 enforcement, 105
 generally, 103
non-competition, 104-105
non-disclosure, 103-104
non-solicitation, 104

D&O insurance, 41-43

Derivative actions, 115, 117-118

Dilution protection rights, 76-77

Directors, *see also* Board of Directors

acquisition and redemption of shares, 29
appointment, 21
borrowing, 30
business judgment rule, 28
by-laws, passing of, 32
commissions, authorizing payment of, 30
compliance with CBCA and company charter, 30
conflict of interest, disclosure of, 26-27
corporate opportunity, avoiding misuse of, 27
D&O insurance, 41-43
death, 21
dividends, declaration of, 30-31
duties, generally, 25
duty of care, 27-28
election, 21, 70-71
fiduciary duty, 25-26, 27-28, 34, 91, 115, 134
filling a vacancy, 21
financial statements, approval of, 29
insurance, 41-43
meetings
 attendance at, 132, *see also* **Board meetings**
 preparation for, 132-137
officers, appointment of, 29
personal assets, protection of, 39, 44-45
powers, restriction of, 71
protection of
 company by-laws, 40
 due diligence defense, 43
 experts, relying on, 44
 generally, 39-40
 indemnification agreement, 40-41
 insurance, 41-43
 recording dissents, 43-44
 resigning, 45

unanimous shareholder agreement, implementing, 44-45
removal, 21-22, 71

remuneration, fixing, 32
resignation, 21-22, 45
shares, issuance of, 32
vacancies, filling of, 31

Dispute resolution

generally, 115-116
mediation and arbitration, 116-117

Dissolution

liquidation and, 71-72, 118, 121
shareholder liability, 56
shareholder receipt of company property on, 57, 60-61

Dividends

declaration of, 22, 29, 30-31
improper payment, director's dissent, 44
receipt of, 60
return on investment, 56
shareholder dividend rights, 57, 78-79

Drag-along rights, 98-99

Due diligence defense, 31, 43

Entrepreneurial governance model, 2, 123, 140

Fiduciary duty, directors, 25-26, 27-28, 34, 91, 115, 134

Financial statements

annual meeting and, 109-110, 111
audit committee's review of, 23, 127
directors' approval of, 22, 29
generally, 12
information rights of shareholders and, 79, 92
misstatement in, 110
shareholder rights
 right to examine, 59
 right to receive, 59-60

First refusal, right of

auction as alternative to, 102
generally, 96-98
piggyback rights and, 98

Governing statute (CBCA), 11-12

Information rights of shareholders, 79, 84, 92, 103

Insurance, Directors and Officers, (D&O), 41-43

Liquidation and dissolution, 71-72, 79-80, 121

Management

duties, 47-48
line of authority between board and, 50-51
line of communication between board and, 49-50
representation in shareholder agreements, 89-91
role of board vs. role of management, 49
signing authorities, 48-49
supervision by directors, 11, 19, 21, 25
unanimous shareholder agreement and, 17, 44

Nomination rights of shareholders, 80

OECD Principles of Corporate Governance, 4

Officers, *see also* Management

appointment of, 29
CBCA definition, 47
D&O insurance, 41-43
role, 12

Oppression remedy

family businesses, 119-120
generally, 118-119

Organization for Economic Co-operation and Development (OECD) Principles of Corporate Governance, 4

Piggyback rights, 82-83, 98

Pre-emptive rights

generally, 80-81
shareholder agreement, under, 94-95

Private company defined, 8-9

Proxies

shareholders' right to solicit, 55, 62, 63-64

Public accountant, 11, 12

Quasi-public company governance model, 2, 123, 140

Recommended practices for good corporate governance

board diversity, 129-130
compensation, 126
defined roles and responsibilities, 126
experienced directors, regular evaluation, 124-125
family-owned companies, 128-129
generally, 123-124
implementation, 127-128
integrity and ethical dealing, emphasis on, 126-127
risk management, 127

Redemption rights of shareholders, 81-82

Registration rights of shareholders, 82-83

Resident Canadian

composition of board of directors, and, 20

quorum, and, 35

Retraction right, 81

Right of first refusal

auction as alternative to, 102

generally, 96-98

piggyback rights and, 98

Risk management, 127

Share certificates

right to receive, 61

right to receive replacement, 61-62

Shareholder agreements

auction rights, 102-103

bank financing and guarantees, 93-94

board and management representation, 89-91

co-sale rights, 98

covenants

family law, 105-106

generally, 106-107

negative

enforcement, 105

generally, 103

non-competition, 104-105

non-disclosure, 103-104

non-solicitation, 104

drag-along rights, 98-99

generally, 87-89

information rights, 92

mandatory shareholder funding, 94-96

major decisions, 92-93

piggyback rights, 98

pre-emptive rights, 94-95

profits, use of, 93

right of first refusal, 96-98

shotgun rights, 101-102

transfer rights, 99-100

transferred shares, valuation of, 100-101

unanimous

generally, 16-18, 89

protection of directors from liability, 44-45

removal of board's power to manage, 11, 19

Shareholder meetings

adjournment, 112

annual meetings, 109-110

auditor, role at meeting, 110

circular shareholder resolution, 22

conduct, 112-114

generally, 109

minutes, 114

notice of meeting, 111

place of meeting, 110-111

preparation, 112

requiring auditor attendance, 62

requisitioning meeting, 62

soliciting proxies, 62

special meetings, 110

submitting proposals, 62-63

voting, 63-64

Shareholder remedies

auditor

appointment, 120

removal, 122

contract set aside by court, 122

derivative action, 117-118

election controversy, court settling, 122

fix fair value of shares, court order requiring, 121

investigation of company, 121

liquidation of dissolution of company, 121

meeting

calling of, 120

order restraining, 122

oppression remedy, 118-120

order for compliance with CBCA, 121

records, rectification of, 122

Shareholder rights, generally

conversion rights, 75-76

dilution protection rights, 76-77

dividend rights, 78-79

generally, 75

information rights, 79

liquidation rights, 79-80

nomination rights, 80

pre-emptive rights, 80-81

redemption rights, 81-82

registration rights, 82-83

veto rights, 83

voting rights, 83-84

withdrawal or loss of rights, 84

Shareholder squeeze-out, 58, 72-73

Shareholder statutory rights, collectively exercised

amalgamation, 66-67

amending articles, 67-68

assets, transfer of all, 73-74

auditors

appointment, 68

removal, 68

by-laws, confirming, rejecting or amending, 68-70

continuance, 70

directors

election, 70-71

removal, 71

restriction of powers, 71
 generally, 65
 liquidation and dissolution, 71-72
 squeeze-out, 72-73
 stated capital, increasing and reducing, 73

Shareholder statutory rights, individually exercised

corporate records
 copies, 58
 examination, 58
 examination of shareholder list, 58
 dissent and appraisal, 58-59
 dissolution, receipt of company property on, 60-61
 dividends, receipt of, 60
 equality of shareholders, 57
 financial statements
 examination, 59
 receipt, 59-60
 generally, 55-57
 liability of, 56
 meetings
 requiring auditor attendance, 62
 requisition of meeting, 62
 solicitation of proxies, 62
 submission of proposals, 62-63
 voting, 63-64
 share certificates
 receipt, 61
 receipt of replacement, 61-62
 “walking with their feet”, option not available, 56

Shares, issuance of, 32

Shotgun rights, 101-102

Solvency tests, 29, 30, 31, 59, 60, 73, 79, 82, 100

Special resolution

amalgamation agreement, 66
 amending articles, 67-68
 generally, 65
 liquidation and dissolution, 71-72

Stated capital

increasing and reducing, 73

Transfer rights, 99-100

Unanimous shareholder agreements

generally, 16-18, 89
 protection of directors from liability, 44-45
 removal of board’s power to manage, 11, 19

Veto rights of shareholders, 83

Voting rights of shareholders, 83-84

Voting switch provisions in shareholder agreements, 91