

Alberta to remove Canadian residency requirements for directors: Reducing the burden for foreign-owned corporations

JULY 28, 2020 3 MIN READ

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Bill 22, Red Tape Reduction Implementation Act, 2020 (Bill 22 or the Bill) [PDF], which had its first reading in the Alberta Legislature on June 11, 2020, received Royal Assent on July 23, 2020. Among the changes included in this Bill are amendments to the *Business Corporations Act* (Alberta) (the ABCA) and the *Companies Act* (Alberta) (the Companies Act) to remove all Canadian residency requirements for corporate directors.

These legislative changes reflect the reality that it is inconvenient for many foreign-owned corporations to appoint resident Canadian or Albertan directors. The movement away from the residency requirement will put Alberta in line with the other Canadian jurisdictions of Québec, British Columbia, Nova Scotia, New Brunswick and Prince Edward Island, which also do not have a residency requirement for directors under their respective provincial acts. This change will allow Alberta to be a more friendly jurisdiction for our foreign clients looking to incorporate Alberta-based subsidiaries without any requirement to find Canadian residents to fill director positions.

Current director residency requirements under the ABCA and the *Companies Act*

Currently, the ABCA requires that at least 25% of the directors of a corporation must be resident Canadians. Additionally, subject to certain limited exceptions, directors may not transact business at meetings of directors unless at least 25% of the directors present are resident Canadians. Further, directors may not delegate any of their powers to a managing director unless the managing director is a resident Canadian or to a committee of directors unless at least 25% of the committee members are resident Canadians.

For entities incorporated under the Companies Act, the residency requirements are even more restrictive as at least 50% of the members of the board must be resident Albertans, and business may not be transacted at meetings of the board unless 50% of the members of the board of directors at that meeting are resident Albertans.

These requirements have historically been burdensome for foreign shareholders who have acquired or incorporated Alberta-based subsidiaries. In practice, we have seen many foreign clients choose to appoint “placeholder” Canadian or Albertan residents as directors of their Alberta-based subsidiaries to meet these requirements around residency. To preserve control over the corporation, these foreign shareholders then implement a unanimous shareholder declaration that restricts all of the directors’ powers to manage the business and affairs of the corporation (which are instead assumed by the foreign shareholder), effectively leaving the board with no role.

Purpose and status of Bill 22

The Bill is an omnibus bill, which has been characterized by the Alberta government as being intended to reduce the burdens for businesses in the province, to encourage investment, to increase Alberta's competitiveness and to help restart the economy amidst the ongoing COVID-19 pandemic. The Bill has proposed amendments across a number of Alberta acts, including the ABCA and the Companies Act. All changes to both the ABCA and the Companies Act under the Bill will come into force on Proclamation.