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RISK & COMPLIANCE JOURNAL.

The Morning Risk Report: Canada Revamping Corporate Governance

By

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Corporate governance in Canada is headed for a makeover–even if not of the extreme kind–as new regulation proposes to mandate some changes already part of best practice at many companies, including majority shareholder voting, annual director elections and disclosure of diversity among directors and senior management.

The bill got a first reading in Parliament in late September and proposes to amend the Canada Business Corporations Act, the federal law that regulates corporations. Although it will take a few months before the legislation is finalized, corporate governance experts welcome the steps to align the law with governance practices that have largely been in place as self-regulated policies, such as shareholder majority voting. "We are very happy to see [majority voting] finally made it in the proposed amendments, and we hope it is in fact enacted and that, once enacted federally, various provinces that have corporate statutes will then enact the majority voting as well," said Stephen Erlichman, executive director of the Canadian Coalition for Good Governance, a membership organization of institutional investors that manage more than $2 trillion in assets. The Coalition had been proposing such an amendment to the law since 2006, said Mr. Erlichman, and the Toronto Stock Exchange made majority voting a requirement for companies listed in the exchange, although not for the junior TSX-Venture exchange. A majority vote standard means shareholders can have the option to vote "for" or "against" as opposed to "for" and "withhold," as is the case in the plurality standard currently in the CBCA. The proposals, which apply only to publicly traded entities, also scrap slate voting and include annual elections of directors, eliminating staggered boards, which have been in place "as a practical matter" in most companies in Canada, said Mr. Erlichman.

Another proposed change is a requirement for disclosure on diversity at board and senior management level, something companies on the TSX are already required to do. Legislators will be refining the bill as it travels through Parliament, and it is still unclear whether an existing "comply or explain" model, in which companies have to justify a lack of disclosure, will prevail or if there will be stricter rules, attorneys at Davies Ward Phillips & Vineberg LLP wrote in a note to clients. "We do not, however, expect the proposed amendments to impose targets or quotas on issuers; instead, they are likely to promote a similar approach to that currently in place under securities laws," they wrote. Missing from the proposed rules are say-on-pay provisions, something largely absent from Canadian corporate governance, said Mr. Erlichman, and the shareholders' right to nominate a director, the so-called proxy access that has been gaining ground at U.S. corporations in recent years. "But we are very happy to see the changes that are being suggested," he said.

Correction:
The Toronto law firm that published a note to clients is Davies Ward Phillips & Vineberg LLP. An earlier version of this story misspelled the firm's name.

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