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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The principal corporate entity in Canada is the business corporation, which provides shareholders with limited liability protection. These can be formed under Canada's federal business corporations statute (the *Canada Business Corporations Act* (CBCA)) or under a business corporations statute of one of Canada's 10 provinces or three territories. Most of Canada's provincial and territorial corporations statutes are substantively very similar to the CBCA. As such, save certain exceptions (see question 1.3 below), there has historically been little competition among Canadian jurisdictions for incorporation business, and it is most common for a private company to incorporate either under the CBCA or in the jurisdiction of its headquarters or main business operations. Historically, the majority of Canadian public companies are incorporated under the CBCA. Certain of Canada's provincial business corporations statutes offer unlimited liability corporations, which are typically used for cross-border tax planning purposes (but which do not necessarily provide shareholders the extent of limited liability protections that business corporations do).

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

Canadian corporate governance law and practice derive primarily from principles imposed by business corporations statutes, such as the CBCA and related caselaw. For further discussion, see questions 3.6 and 3.7 below.

In addition to corporations statutes, the governance of Canadian public companies is also a function of securities laws and, among other things, the rulings of Canada's various securities commissions. Unlike the United States, Canada does not have a federal securities commission, but rather different securities statutes and different securities regulators in different provincial and territorial jurisdictions. This can make securities laws considerations and compliance, including as relates to corporate governance, slightly more complex in Canada than in other jurisdictions, although there is much harmonisation between provincial and territorial requirements. The two predominant exchanges in Canada are the Toronto Stock Exchange (TSX) and the TSX Venture Exchange (TSXV). Corporate governance in Canada is also influenced by various non-legal sources, including industry best practices, the recommendations of proxy advisory firms, and the expectations of institutional investors.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

Environmental, Social and Governance (ESG) considerations and related risk management are increasingly central to corporate governance and decision making by Canadian public companies, investors, regulators and other stakeholders. Issues of particular focus include Diversity, Equity and Inclusion (DEI), Indigenous engagement and reconciliation, climate change, combatting forced labour and child labour, and public disclosure and filings related to the foregoing.

Regarding Indigenous matters, an increasing number of Canadian public companies are disclosing plans or policies focused on engagement and reconciliation, particularly in Canada's resources and finance sectors.

Regarding climate change, although not yet legally mandated, the majority of Canada's largest public companies have voluntarily been disclosing climate-related information for several years. Such disclosure most commonly focuses on goals and targets to reduce greenhouse gas (GHG) emissions, such as net-zero targets, GHG emissions reduction targets, and carbon intensity improvement targets. Canadian Securities Administrators are currently preparing Canada's first mandatory climate-related disclosure rules, which will be based on the standards of the International Sustainability Standards Board with such modifications deemed appropriate for the Canadian market. Progress on the implementation of this rule has been slow, as Canadian regulators have been monitoring developments with the Securities and Exchange Commission (SEC)'s climate disclosure rule in the U.S.

Regarding combatting forced labour and child labour, a comprehensive new legislation entered into effect in January 2024 that imposes annual reporting obligations on many Canadian businesses concerning forced and child labour in their supply chains. The legislation also creates new enforcement powers, imposes significant financial penalties for violations, and affects the importation of goods produced in whole or in part with improper labour.

Although there has historically been little competition among Canadian provinces regarding attracting incorporation business (see question 1.1 above), a recent notable exception is the amendments made to the Alberta *Business Corporations Act* in 2022, specifically intended to accommodate venture capital and private equity investors. These include a "corporate opportunity waiver" modelled on Delaware Law to facilitate investment funds investing in multiple related or competitor businesses.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short termism and the importance of promoting sustainable value creation over the long term?

Canadian corporate boards generally carefully weigh balancing the pursuit of the corporation's best interests over the short, medium and long term. The use of ESG as a framework for assessing and managing long-term risks faced by corporations has not seen the same pushback or become as politically divisive in Canada as has recently been the case in certain other jurisdictions. Canada has not yet seen any proposed rules or legislation that would limit or otherwise regulate the ability of pension funds or other regulated investors to make investment decisions based on longer-term ESG considerations. We are beginning to see a shift from "ESG" terminology to broader "sustainability" terminology in corporate policies and disclosure. Regardless of terminology, the majority of large Canadian public companies disclose a comprehensive ESG or sustainability oversight function by their board or a specific board committee. Canadian public companies are also increasingly disclosing the ESG/sustainability-related credentials of their directors, as well as increasingly disclosing specific ESG/sustainability-related metrics applicable to executive compensation.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

Shareholders in Canadian corporations influence the company's actions primarily through their rights regarding: the election of directors; the requisition of shareholder meetings; shareholder proposals; and the approval of fundamental changes.

For the appointment and removal of directors, see question 3.2 below.

A shareholder meeting can be requisitioned by a shareholder holding a 5% or greater interest (CBCA s.143). The mere existence of this right can be a significant source of shareholder leverage. However, given corporation-friendly caselaw, the exercise of this right necessitates careful planning and compliance with technical requirements. The requisition of shareholder meetings is a tactic commonly employed by shareholder activists (see question 2.8 below).

Where a corporation is distributing a management proxy circular, a shareholder holding at least a 1% interest is entitled to have included a proposal and supporting statement in the circular, not exceeding 500 words (CBCA s.137). However, where the proposal relates to the election of directors, a minimum 5% shareholding is needed. Shareholders' proposal rights are most commonly exercised in connection with Annual General Meetings (AGMs).

Fundamental changes requiring shareholder approval under corporate statute generally includes: the amendment of articles; changes to by-laws; transactions involving substantially all of the corporation's property; amalgamation (i.e., merger) with another corporation; continuance (i.e., migration) into another jurisdiction; and dissolution. Where a shareholder votes against prescribed fundamental changes, this may give rise to dissent and appraisal rights that entitle the shareholder to compel the corporation to buyout the shareholder's shares.

While shareholder approval is not required for most business decisions, practically speaking, a dialogue often exists between public corporations and significant shareholders. Should a significant shareholder be dissatisfied with the corporation's direction, they may campaign to remove one or more directors or apply other public or private pressure.

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

Aside from their right to elect directors and make shareholder proposals, shareholders in Canada do not have any direct responsibility regarding corporate governance. However, in Canada (as elsewhere), many investors are proactively choosing to exert pressure on public companies regarding ESG or sustainability matters, among other corporate governance issues. A related noteworthy point in the Canadian context is the sometimes outsized influence institutional investors can have on Canadian public companies, compared to certain other jurisdictions (where public companies may be more widely held than many public Canadian companies). For further discussion, see questions 2.4 and 5.3 below.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

AGMs must be held no later than fifteen months after the previous one, or six months after the corporation's latest financial year. Canadian AGMs are principally concerned with: the election of directors; the corporation's financial statements and the auditor's report thereon; and auditor appointment. Meetings to conduct business, other than the foregoing, are generally "special meetings". "Say-on-pay" proposals have been prevalent for large public companies for some time and ESG-related proposals, such as "say-on-climate" proposals, are increasingly being put forth at shareholder meetings.

Canadian shareholders are entitled to attend meetings; however, they more commonly vote by proxy. Matters subject to a shareholder vote must be addressed in a comprehensive management information circular that includes, among other things, the board's recommendation. Shareholder meetings in Canada have increasingly been held virtually rather than in person, a trend which began before but (as elsewhere) was strengthened by the COVID-19 pandemic. Since the pandemic, certain Canadian corporations statutes were amended to expressly permit virtual shareholder meetings and prescribe rules that Canadian public companies must meet when conducting virtual meetings. Canadian securities regulators have also issued guidance regarding their expectations for virtual meetings of Canadian public companies.

The procedures for shareholder meetings are as prescribed by the company's by-laws. As discussed above in question 2.1, a shareholder holding a 5% or greater interest can requisition a shareholder meeting (CBCA s.143), and a shareholder holding a 1% or greater interest is entitled to have included in the meeting circular a proposal and supporting statement not exceeding 500 words (CBCA s.137). The percentage of shares a shareholder must hold to nominate a director for election varies and is set forth in the corporation's articles and/or bylaws. As discussed below in question 2.8, the nomination of directors by a shareholder is typically subject to advance notice by-laws.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

Shareholders in Canada do not owe any fiduciary or similar duties to the corporation or to other shareholders, and Canadian corporate law does not include the concept of a "controlling shareholder" (i.e., as seen in the United States) whereby such a shareholder may assume fiduciary duties to minority shareholders. As a result, shareholders of Canadian corporations are generally free to act in their own self-interest.

Where a unanimous shareholder agreement (USA) governs the corporation, to the extent the USA restricts the powers of the directors to manage the corporation's business, the associated duties and liabilities of the directors to the corporation are transferred from the directors to the shareholders (and the directors are relieved therefrom).

Canadian law respects the principle of separate corporate personality and shareholders can only be liable for acts of the corporation where a court deems it appropriate to "pierce the corporate veil". As in other jurisdictions, this generally imposes a very high standard and occurs relatively infrequently.

There are generally no stewardship principles or laws regulating the conduct of shareholders. However, as discussed in questions 1.3, 1.4, 2.2, 3.7, 4.4 and 5.1 to 5.3, there are considerable investor pressures and expectations in Canada regarding ESG and related issues, including among institutional investors.

Care must be taken where a shareholder has nominated a director to the corporation's board. Despite being nominated by the shareholder, the director's fiduciary duties remain owed to the corporation and not the shareholder. The nominee director must also carefully navigate confidentiality issues when considering sharing corporate information with the nominating shareholder.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

Shareholders enjoy three main avenues of enforcement action against the corporation and/or its directors regarding corporate governance matters, being: an oppression claim; a derivative action; and a personal action.

The oppression remedy is unique to Canadian corporate law and enables shareholders to pursue relief for conduct of the corporation or its directors that is allegedly oppressive or unfairly prejudicial or that unfairly disregards the interests of a security holder, creditor, director or officer. It is a broad statutory remedy that also grants the courts wide flexibility in fashioning any resulting relief. It is typically the first recourse of any aggrieved shareholder because of the broad array of circumstances in which an oppression claim might lie, as well as certain procedural advantages relative to other potential claims.

Similar to other prominent jurisdictions, Canadian corporate law enables derivative actions whereby a shareholder can pursue a claim on behalf of the corporation, e.g., against a director for a breach of fiduciary duty owed to the corporation (see question 3.6 below). Unlike an oppression claim, the shareholder must first seek the court's permission to institute the derivative action on behalf of the company.

A personal action seeks to enforce rights personal to the shareholder, such as the right to requisition a shareholder meeting or nominate an alternative slate of directors prior to the corporation's AGM. Personal actions can arise, for example, amid a shareholder activist campaign.

Finally, shareholder class actions against public companies in connection with alleged failings in their public disclosure are not uncommon in Canada. As elsewhere, Canadian public companies are increasingly alive to the risks associated with potential allegations of "greenwashing".

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

At the general level, certain Canadian corporations statutes impose transparency requirements whereby information regarding individuals with significant control over the company must be filed with regulators. For example, since 2019, most corporations governed by the CBCA must identify any person owning or controlling 25% or more of the corporation's shares, whether individually or in concert with other person(s). The primary purpose of such legislation is to facilitate government efforts against tax evasion, money laundering and similar illicit activity. However, pursuant to recent amendments, certain of such information is now also publicly available.

Shareholders can acquire up to 9.9% of the voting or equity securities of any class of a Canadian public company without triggering any public disclosure obligations. Once a 10% stake is accumulated, however, a press release must be immediately issued and an "early warning report" must be filed within two business days. Among other things, these require the shareholder to disclose its shareholding and investment intent. Upon attaining a 10% interest, the shareholder assumes ongoing reporting obligations. These include the disclosure of: each time the shareholder acquires or disposes 2% or more of the corporation's securities; if the shareholder falls below the 10% threshold; and/or a material change in information within a previously filed report.

Insiders of Canadian public companies are required by securities laws to file insider reports disclosing their trading activity. The notion of "insider" is defined broadly and includes, among others, the company's directors, officers and significant shareholders (in general terms, 10% shareholders), as well as any person or entity that has significant influence over the company or routine access to material undisclosed information. The company itself will qualify as an insider where it has purchased, redeemed or otherwise acquired some of its own securities.

Regarding limitations on share ownership, any acquisition of shares in a Canadian public company by a shareholder that, together with the shares already owned by the shareholder, would bring the shareholder's interest to 20% or more must comply with Canada's takeover bid regime. In addition, the *Competition Act* (Canada) and the *Investment Canada Act* (Canada) have thresholds for the acquisition of shares (20% and 33.33%, respectively) of a public company that could trigger considerations under these statutes.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

As discussed in question 2.6 above, once a shareholder accumulates a 10% or greater stake in a Canadian public company it must file an "early warning report" which must disclose, among other things, the shareholder's investment intent.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholder activism and proxy battles have become increasingly common in Canada over the last two decades and several aspects of Canadian law, such as the right of shareholders holding at least a 5% interest to requisition shareholder meetings, are often described as "activist-friendly". Similarly, the requirement to file an "early warning report" in Canada (see questions 2.6 and 2.7 above) is only triggered at 10% (and not at 5% as in the U.S.) is often highlighted as being "activist-friendly".

Shareholder activism in Canada is regulated by both corporate and securities laws. For example, most Canadian jurisdictions permit activists to solicit proxies from up to 15 shareholders without mailing a dissident proxy circular. Following Canada's first high-profile activist campaigns, most Canadian public companies adopted advance notice by-laws imposing minimum notice and information requirements regarding dissident board nominations. Among many other considerations, any activist campaign in Canada must also carefully navigate complex laws regarding "joint actors", insider trading and tipping. As elsewhere, the position of proxy advisory firms can have a significant impact on the success (or failure) of an activist campaign.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The corporation's board of directors has full control and responsibility for managing, or supervising the management of, the corporation's business. The board appoints officers and delegates to them many of the board's management powers and responsibilities, including day-to-day management, and such officers and executives serve at the pleasure of the board.

3.2 How are members of the management body appointed and removed?

Directors are elected by shareholders at the corporation's AGM or at a special meeting called for that purpose. For corporations governed by the CBCA or publicly listed on the TSX, majority voting applies to uncontested elections. This allows shareholders to vote "for" or "against" each individual director nominee and, for the nominee to be elected, they must receive a majority of the votes cast. Shareholders can remove a director by resolution at a special meeting called, wholly or partially, for that purpose.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

Although "say on pay" (i.e., a non-binding advisory vote on executive compensation) is not yet mandated by the CBCA or by applicable securities laws, it is a widely supported corporate governance best practice that has been voluntarily adopted by many Canadian public companies. Canadian public companies and their shareholders also give considerable weight to the "say on pay" recommendations of proxy advisory firms (i.e., ISS and Glass Lewis). Otherwise, the CBCA and other Canadian corporations statutes generally expressly permit directors to decide the terms of their own compensation. In practice, independent compensation committees are typically formed and often engage the analysis and advice of third-party compensation advisors.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

As discussed above in question 2.6, shareholders (including management) of Canadian public companies that qualify as "insiders" must file "insider reports" in compliance with securities laws. Certain Canadian corporations statutes impose transparency requirements whereby information regarding individuals with significant control over the company must be filed with regulators.

3.5 What is the process for meetings of members of the management body?

The boards of large Canadian companies or publicly listed Canadian companies generally meet every three months, or more frequently where a significant transaction is being negotiated. The procedure for board meetings, including regarding place, notice and quorum, are set forth in the company's by-laws. Generally, where unanimous, Canadian corporations statutes allow boards to act by written consent *in lieu* of a meeting.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Under the CBCA and Canada's other corporations statutes, directors and officers have two principal duties: the duty of loyalty; and the duty of care.

The duty of loyalty requires that directors and officers act honestly and in good faith with a view to the corporation's best interests. Directors and officers must act impartially and place the corporation's interests first, not allowing their decisions to be tainted by self-interest or self-dealing. They must avoid (and disclose) conflicts between the corporation's interests and any competing interests, including their own.

The duty of care requires that directors and officers, in managing the corporation, exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duty of care also requires that directors and officers sufficiently inform themselves and weigh all material information available to them prior to acting.

Importantly, the foregoing fiduciary duties: are owed to the corporation and not to shareholders or other stakeholders; and cannot be waived by contract or the corporation's articles or by-laws (although, as discussed in question 2.4 above, such duties can be wholly or partially transferred from the directors to shareholders by the terms or functioning of a USA).

Finally, Canadian directors enjoy the protection of the business judgment rule providing that, if a board acts in good faith and on an informed basis, it is presumed to have acted in the corporation's best interests. While a high degree of diligence is expected, perfection is not required. Judicial scrutiny will generally focus on whether the directors applied an appropriate degree of prudence in exercising their discretion. So long as the decision falls within a range of reasonable alternatives, the court will not substitute its opinion for the board's, regardless of subsequent events. The business judgment rule reflects the reality that directors are generally better suited than courts to determine a corporation's best interests. However, the rule is not a complete defence; prudent business judgment must actually be exercised for directors to benefit.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

The main corporate governance responsibilities of Canadian directors derive from their duty of loyalty and duty of care.

Notably, while these duties are owed to the corporation rather than to shareholders or other stakeholders, the CBCA expressly provides that, when acting with a view to the corporation's best interests, Canadian directors and officers may consider, without limitation: the interests of shareholders, employees, retirees and pensioners, creditors, consumers and governments; the environment; and the corporation's long-term interests. Furthermore, this flexibility effectively applies to all Canadian corporations regardless of the corporate statute under which they are incorporated given a related and substantively similar ruling by the Supreme Court of Canada (Canada's highest court).[1]

This ability of Canadian directors and officers to consider broader stakeholder interests in deciding the corporation's best interests dovetails with increasing stakeholder and societal pressure for corporations to address such issues as DEI, ESG and climate change (see questions 1.3 and 1.4 above). The ability of Canadian directors and officers to consider broader stakeholder interests in deciding the corporation's best interests also dovetails with various mandated corporate governance-related disclosure obligations (see questions 5.2 and 5.3 below). A key current corporate governance challenge for Canadian boards is therefore how to best balance the board's duties to the corporation and the pursuit of growth with pressure to simultaneously address broader stakeholder interests.

Otherwise, the main corporate governance responsibility of the board is the effective and prudent oversight of management's performance in operating the company. In the event of any proposed transaction involving a conflict of interest with management, the board (or a special committee of the board's members) should assume primary control.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

The CBCA and other Canadian corporations statutes expressly permit the corporation to indemnify directors and officers for liabilities incurred in performing their duties and to purchase insurance toward that end. Provided the director or officer has acted honestly and in good faith with a view to the corporation's best interests, such indemnification is generally available.

Coverage generally applies both to the costs of defending claims against the director or officer, as well as to amounts payable to settle a claim or to satisfy an adverse judgment. In certain cases, indemnification may be mandatory, e.g., where it is held the director or officer did not engage in any improper behaviour. In other cases, indemnification may be expressly prohibited, e.g., where it is held the director or officer breached their fiduciary duty.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

As discussed in question 3.1 above, the board of directors plays the primary role in setting, changing and implementing corporate strategy and business decision-making. This generally includes, among other things: advising on and approving the company's annual plans and long-term strategy; advising on and guiding major stakeholder and other strategic relationships; advising on and guiding transformative or otherwise material transactions; and establishing and implementing succession-planning for senior executives.

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

As discussed in question 3.7 above, while Canadian directors' and officers' fiduciary duties are owed to the corporation rather than to shareholders or other stakeholders, the CBCA and Canada's highest court instruct that, when acting with a view to the corporation's best interests, directors and officers may consider, without limitation: the interests of shareholders, employees, retirees and pensioners, creditors, consumers and governments; the environment; and the corporation's long-term interests. As also discussed in question 3.6 above, directors and officers in Canada enjoy the protection of the business judgment rule whereby a court will not substitute its opinion for the board's, including should a board give particular weight to non-shareholder stakeholder interests. That said, for numerous practical and other reasons, including the fact that shareholders have the ultimate residual interest in a company, shareholder interests still weigh heavily in making material business decisions.

For disclosure requirements and market practice related to non-shareholder stakeholder interests, see question 4.4 below.

4.2 What, if any, is the role of employees in corporate governance?

Unlike in some other jurisdictions (e.g., certain European countries), employees play no direct role in corporate governance in Canada. However, as discussed in questions 3.7 and 4.1 above, Canadian law does expressly allow directors to consider employee interests in deciding the corporation's best interests. One way this sometimes manifests is the Canadian target of a foreign acquiror requiring, as a condition of the purchase, that the foreign acquiror maintains the target's headquarters in Canada post-closing.

4.3 What, if any, is the role of other stakeholders in corporate governance?

Shareholders play a direct role in corporate governance in Canada through their rights, as discussed above in questions 2.1 to 2.8. Otherwise, except for the ability of directors to consider stakeholder interests in deciding the corporation's best interests, as discussed in questions 3.7, 4.1 and 4.2 above, and the influence that certain stakeholders have, non-shareholder stakeholders do not have statutory rights that allow them to play a direct role in corporate governance in Canada.

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility and similar ESG-related matters?

As discussed in questions 3.7 and 4.1 above, Canadian law permits, but does not require, directors to consider stakeholder

interests in deciding the corporation's best interests, including environmental issues. In practice, and as discussed in questions 1.3, 1.4, 2.2, 3.7 and 5.2 to 5.3, Canadian companies have been proactively and voluntarily addressing CSR/ESG-related matters for several years, including through the adoption of internal policies and procedures as well as in their public disclosure. However, these matters are steadily becoming subject to increased regulation. Climate change and GHG emissions disclosure is not yet mandated; however, such prescriptions are in process. By contrast, federal legislation regarding DEI disclosure and forced and child labour matters have already entered effect.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency and what is the role of audits and auditors in these matters?

Responsibility for disclosure and transparency at Canadian public companies rests with the board of directors and senior management, including the CFO and CEO. They are supported by audit committees, legal counsel and investor relations personnel. External auditors play a key role. This has always been the case regarding financial reporting and disclosure. Increasingly, Canadian public companies are also relying on external auditors in connection with non-financial disclosure, e.g., in connection with ESG issues and to mitigate the risk of any allegations of "greenwashing" by investors or the market. External auditor assurance regarding ESG reporting can assist companies and stakeholders to evaluate the quality and reliability of certain ESG metrics and data used for reporting. Private companies in Canada generally enjoy the flexibility in deciding whether to appoint an auditor, and often waive this requirement.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

Public companies in Canada are subject to various corporate governance disclosure requirements imposed by securities laws, including as relate to the corporation's: corporate governance policies generally; board composition and independence; board committees, including audit committees and compensation committees; executive compensation; risk management and internal controls; and related party transactions.

Canadian public companies governed by the CBCA must include a certain diversity disclosure in their management information circulars regarding "designated groups". This term includes women, Aboriginal peoples, members of visible minorities, and persons with disabilities. This regime implements a "comply or explain" approach. Information required to be disclosed includes: whether the corporation has adopted a formal diversity policy regarding board and management appointments; whether the corporation has set formal targets and timelines regarding diversity among its board and management; and current diversity statistics among board and management by number and percentage.

As discussed in question 1.3 above, new federal legislation regarding forced labour and child labour became effective in Canada in January 2024. This imposes mandatory reporting obligations on Canadian companies importing goods into Canada or producing (e.g., growing, manufacturing, extracting or processing) goods in Canada or elsewhere. Disclosure required by such companies includes: their structure, activities and supply chain; their policies and due diligence processes relating to forced and child labour; and supply chain risks related to forced and child labour and steps taken to assess and manage such risks.

5.3 What are the expectations in this jurisdiction regarding ESG- and sustainability-related reporting and transparency?

Aside from related legal obligations and regulatory guidelines, expectations exist among some Canadian investors regarding ESG and sustainability-related reporting and transparency. In particular, due to their significant ownership stakes in many Canadian public companies, institutional investors, such as pension funds, wield noteworthy influence in Canadian capital markets. Such large ownership stakes, the long-term investment horizons of institutional investors, and the fiduciary duties owed by institutional investors to their beneficiaries can align with promoting ESG and sustainability-related issues. For example, EDI matters are, generally speaking, an area of particular focus among numerous Canadian institutional investors.

5.4 What are the expectations in this jurisdiction regarding cybersecurity and technology-related reporting and transparency?

There are currently no mandated disclosure requirements regarding cybersecurity or similar technology-related risks in Canada and the extent to which Canadian public companies report on such issues remains a function of materiality principles generally under Canadian securities laws. As with other disclosure issues, Canadian public companies and their shareholders also give considerable weight to the recommendations of proxy advisory firms (i.e., ISS and Glass Lewis) relating to cybersecurity and similar technology-related risks.

Endnote

1. See *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 (CanLII), [2008] 3 SCR 560.

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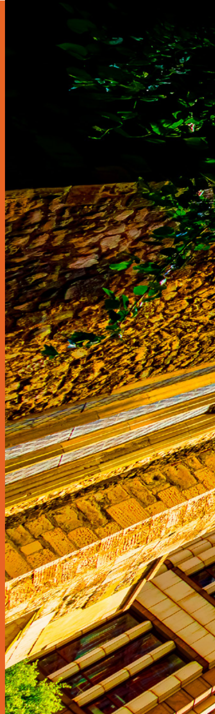

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