

# Broad Corporate Governance Changes Proposed in Canada

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On April 8, 2019, the federal government of Canada introduced Bill C-97 to implement certain provisions of the budget and other measures. The Bill proposed several important amendments to the Canada Business Corporations Act (CBCA). The most significant and noteworthy provisions would require “prescribed corporations” to develop an approach to remuneration, hold an annual non-binding shareholder vote on executive compensation, and provide annual disclosures on diversity, clawback policies and the well-being of employees, retirees and pensioners.

## Say-On-Pay

It now appears that Canada will join the U.S., UK, European Union, France, and Australia in giving shareholders of public companies some form of vote on executive compensation. Bill C-97 would introduce a new section to the CBCA, which would mandate that “prescribed corporations” develop and annually disclose their approach to compensation for directors and “members of senior management.” Prescribed corporations would then be required to conduct a non-binding “Say on Pay” shareholder vote on the compensation approach at each annual meeting and disclose the results of the vote to shareholders. Bill C-97 is in line with the U.S. and Australian advisory approach to Say on Pay, rather than the UK, EU, and France, which permit binding and non-binding shareholder votes on executive compensation. In addition, the Bill underscores that institutional investors all over the world want a say in how executive compensation is determined and paid relative to performance.

The current version of the Bill does not define “members of senior management” or provide details on which Canadian corporations would be required to hold a “Say on Pay” vote. Nonetheless, we expect that the definition of “prescribed corporations” under the Bill will follow recently proposed regulations under a similar disclosure statute, which defined “prescribed corporations” as distributing corporations (i.e., public companies).

In recent years, there has been a significant increase in large Canadian public companies holding voluntary “Say on Pay” votes in response to shareholder activism or to align with the practices in other jurisdictions, such as the U.S, UK and Australia. Notably, more than 64% of issuers in the S&P/TSX composite index now offer their shareholders a “Say on Pay” vote. However, “Say on Pay” votes are rare at smaller Canadian issuers, and the likely adoption of a broad “Say on Pay” requirement will represent a significant change for many Canadian companies.

## Other Proposed Disclosure Requirements

The Bill also proposes requiring that prescribed corporations provide shareholders with information on the following items at each annual meeting:

- Diversity among the directors and members of senior management
- Clawback policies applicable to the recovery of incentive compensation and other benefits paid to directors and members of senior management
- Update on the well-being of employees, retirees and pensioners

## Next Steps

The Bill is still in the early stages of the legislative process, having only completed the second reading in the House of Commons on April 12, 2019. Even at this early stage, many commenters expect that the proposed amendments to the CBCA will remain part of the Bill and anticipate that the Bill will pass before the upcoming federal election on October 21, 2019. Thereafter, the new governance requirements will be further refined through the regulatory process that can take 12 to 24 months.

We will continue to monitor the progress of Bill C-97 and will update this alert when significant events or changes occur.

For questions about these proposed changes or other governance-related topics, please contact the authors or write to [consulting@radford.com](mailto:consulting@radford.com).

## Author Contact Information

### **Dan Pliskin**

Associate Partner, Rewards Solutions  
Aon  
+1.215.255.2028  
[dan.pliskin@aon.com](mailto:dan.pliskin@aon.com)

### **Michael Nachajski**

Consultant, Rewards Solutions  
Aon  
[michael.nachajski@aon.com](mailto:michael.nachajski@aon.com)

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