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 **NORTON ROSE FULBRIGHT**

Webinar - Important Corporate Governance Development: Forum Selection By-law

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Proposed text for a forum selection by-law

The existing by-law of the corporation could be amended by adding a forum selection provision such as the following:

SECTION [●]: EXCLUSIVE FORUM FOR CERTAIN DISPUTES

Unless the Corporation consents in writing to the selection of an alternative forum, the applicable court of competent jurisdiction for the Province of Ontario, Canada (the “Ontario Court”) **shall, to the fullest extent permitted by law, be the sole and exclusive** forum for any of the following actions or other proceedings:

- i. a derivative action, including an application for leave to commence such an action, in the name of and on behalf of the Corporation;
- ii. an application for an **oppression remedy**, including an application for leave to commence such a proceeding;
- iii. an action asserting a claim of **breach of the duty of care** owed by the Corporation or any director, officer or other employee of the Corporation to the Corporation or to any of the Corporation’s shareholders;
- iv. an action asserting a claim of **breach of fiduciary duty** owed by any director, officer or other employee of the Corporation to the Corporation or to any of the Corporation’s shareholders;
- v. an action or other proceeding asserting a claim or **seeking a remedy** pursuant to any provision of the **Act or the Corporation’s articles or by-laws** (as either may be amended or restated from time to time); and
- vi. an action or other proceeding asserting a claim against the **Corporation or any director or officer or other employee** of the Corporation **regarding a matter of the regulation of the business and affairs of the Corporation**, including (without limitation) the articles, by-laws, internal affairs, governance, status, internal controls and procedures of the Corporation.

If any action or other proceeding the subject matter of which is within the scope of the preceding sentence (an “Action”) is filed in a court other than the Ontario Court in the name of any shareholder (an “Extra-Jurisdictional Action”), **such shareholder shall be deemed to have consented to** (a) the personal jurisdiction of the Ontario Court in connection with any action or other proceeding to enforce the preceding sentence, and (b) having **service of process made upon such shareholder** in any such action or other proceeding by service upon such shareholder’s counsel in the Extra-Jurisdictional Action as agent for such shareholder.

To the extent an Action is brought in the Ontario Court by a **plaintiff who is ordinarily resident outside Ontario**, **the Corporation will not seek security for costs** from that plaintiff solely by reason of that plaintiff’s residence outside Ontario.